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SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 226

J. LAURITZEN, PETITIONER,

vs.

EVALD JOHANN LARSEN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 25, 1952
CERTIORARI GRANTED OCTOBER 13, 1952

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United States Court of Appeals

FOR THE SECOND CIRCUIT

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

against

J. LAURITZEN,
Defendant-Appellant.

Statement Under Rule No. 15

The above entitled action was commenced by the service of summons and complaint upon the defendant on May 7, 1947.

Issue was joined by the service of the defendant's answer on July 1, 1947.

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, the plaintiff, by his attorney, consented on May 7, 1951, to the service of an amended answer by the defendant. The defendant's amended answer was served on May 17, 1951.

Pursuant to a stipulation dated November 16, 1951, paragraph Sixth of the complaint was amended.

The action was tried before the Honorable Edward J. Dimock and a jury on December 5, 6 and 7, 1951, and resulted in a verdict for the plaintiff in the sum of $4,267.50.

Plaintiff taxed costs December 21, 1951, in the amount of $44.50.

Judgment in the amount of $4,267.00 with costs was entered in favor of plaintiff on December 21, 1951.

Statement Under Rule No. 15.

Pursuant to an order of the United States District Court for the Southern District of New York dated December 19, 1951, the title of this action was amended to correct the names of the parties.

Defendant filed notice of appeal from the judgment in favor of plaintiff on January 4, 1952.

Pursuant to an order of the United States District Court for the Southern District of New York dated February 6, 1952, the defendant's time to file the record on appeal was extended to April 3, 1952.

Plaintiff appeared by Richard M. Canton, Esq.

Defendant appeared by Haight, Griffin, Deming & Gardner, Esqs.

In January, 1949, the firm name of Haight, Griffin, Deming & Gardner was changed to Haight, Deming, Gardner, Poor & Havens.

Summons.

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK.

Civil Action File No. 41-475.

IVALE JOHANN LARSEN,
Plaintiff,

v.

"JOHANNES" LAURITZEN, first name being fictitious, real name being unknown,
Defendant.

Plaintiff demands a trial by jury

To the above named Defendant:

YOU ARE HEREBY SUMMONED and required to serve upon Richard M. Cantor, plaintiff's attorney, whose address is 51 Chambers Street, New York 7, New York, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: May 6th, 1947.

WILLIAM V. CONNELL,
Clerk of Court.
[Seal of Court]

10

Complaint.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

ACTION UNDER SPECIAL RULE FOR SEAMEN TO SUE WITHOUT SECURITY AND PREPAYMENT OF FEES FOR ENFORCEMENT OF LAWS OF THE UNITED STATES FOR THE PROTECTION OF HEALTH AND SAFETY AT SEA.

Plaintiff, complaining of the Defendant herein, by his
11 attorney, Richard M. Cantor, respectfully shows to this Court, and alleges:

FIRST CAUSE OF ACTION

FIRST: Upon information and belief that at the time of the hereinafter mentioned occurrence, Defendant has a principal office for the transaction of business at 80 Broad Street, in the Borough of Manhattan, City and State of New York, within the jurisdiction of this Court.

SECOND: Upon information and belief that at all the times hereinafter mentioned, Defendant was the owner of the S.S. Randa.

THIRD: Upon information and belief that at all the times hereinafter mentioned, Defendant operated, man-
12 aged and/or controlled the S.S. Randa.

FOURTH: Upon information and belief, the Defendant herein employed the Plaintiff and paid his wages.

FIFTH: That prior hereto and on or about the 7th day of October, 1946, plaintiff was employed on board the S.S. Randa, and did become a member of the crew of said steamship and entered into the performance of his duties as a member of the crew of the aforesaid vessel and more particularly, as an Able Bodied Seaman.

SIXTH: That on or about the 7th day of October, 1946, and while said vessel was on navigable waters and while Plaintiff was engaged in the course of the duties assigned to him and in furtherance of Defendant's interests, he was caused to sustain personal injuries under the following circumstances:

Plaintiff and a fellow seaman were engaged in fitting hatch boards into the hatch opening. While standing on one of the strong-backs, the other seaman pushed a hatch board at the Plaintiff in a careless and negligent manner so that the Plaintiff was caused to lose his equilibrium and fall to the hatch below.

SEVENTH: That the plaintiff thereby became sick, sore, lame and disabled; and has been, and will be confined to his home and bed; has suffered and still suffers great pain and agony; has been and will be prevented from working with the same facility in the future as he has in the past; has lost and will have to lose large sums of money which he otherwise would have earned; has paid out and will have to pay out large sums of money for his medical and surgical treatment and attention, for medicines and for his board and lodging, all to his damage. 14

EIGHTH: That the said injuries sustained by the Plaintiff were not due or caused by any fault or want of care on his part, but were due to the negligence of the Defendant, his agents, officers and/or employees; in that a fellow seaman was negligent and careless in pushing a hatch board at the Plaintiff in such a manner as to cause him to lose his equilibrium and fall to the hatch below; and in that the Defendant, his agents, servants and/or employees were otherwise careless and negligent in the premises. 15

NINTH: Plaintiff sues to recover indemnity for the personal injuries which he sustained; for his mental and physical pains and suffering; for the permanent injuries which will result; for his loss of wages; for the diminution of his

ability to work and labor; for the moneys which he spent for doctors and hospitals, nurses and medical care, and for the moneys which he will spend for the aforesaid in the future in an endeavor to cure himself, by reason of all of which Plaintiff claims damages in the sum of $12,500.00

TENTH: That at all the times hereinafter mentioned, there was and still is in force and effect an Act of Congress known as the Merchant Marine Act, approved June 5, 1920, Section 33 of which provides as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply * * *."

SECOND CAUSE OF ACTION

Plaintiff repeats and realleges all the facts set forth in the "first cause of action", with the same force and effect as though pleaded herein in full and in addition thereto, alleges:

TWELFTH: That as a result of the foregoing, Plaintiff expended, and upon information and belief, will have to expend large sums of money for his maintenance and cure, all to his damage in the further sum of $2,500.00.

WHEREFORE, Plaintiff demands judgment against the Defendant herein in the sum of $15,000.00 on both causes of action, together with the costs and disbursements of this action.

RICHARD M. CANTOR,
Attorney for Plaintiff,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
City of New York.

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Notice of Appearance and Demand.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Sir:

PLEASE TAKE NOTICE, That the defendant J. Lauritzen, sued as "Johannes" Lauritzen, first name being fictitious, real name being unknown, hereby appears in the above entitled action, and that we are retained as Attorneys for him therein, and demand that a copy of the Complaint and all papers in this action be served on us at our office, No. 20
80 Broad Street, New York 4, N. Y.

Dated, May 20, 1947.

Yours, &c.,

HAIGHT, GRIFFIN, DEMING & GARDNER,
Attorneys for Defendant,
Office and Post Office Address,
80 Broad Street,
New York 4, N. Y.

To:

RICHARD M. CANTOR, Esq.,
Plaintiff's Attorney,
51 Chambers Street,
New York 7, N. Y. 21

Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

J. Lauritzen, sued herein as "Johannes" Lauritzen, defendant, by Haight, Griffin, Deming & Gardner, his attorneys, answering the complaint of the plaintiff herein, alleges upon information and belief:

ANSWERING THE FIRST CAUSE OF ACTION:

FIRST: Denies each and every allegation of paragraphs First and Eighth of the complaint.

SECOND: Admits the allegations of paragraphs Second, Third, Fourth and Fifth of the complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs Sixth, Seventh and Ninth of the complaint.

FOURTH: Answering the Tenth paragraph of the complaint, defendant admits that the act referred to was and is in force, but denies that it has any application to this action.

ANSWERING THE SECOND CAUSE OF ACTION:

FIFTH: Defendant repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein set forth at length.

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations of paragraph Twelfth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A SEPARATE, PARTIAL OR COMPLETE DEFENSE TO BOTH CAUSES OF ACTION, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

SEVENTH: That if the plaintiff suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

WHEREFORE, defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

HAIGHT, GRIFFIN, DEMING & GARDNER,
Attorneys for Defendant,
By EDGAR R. KRAETZER,
A member of the firm,
80 Broad Street,
New York 4, N. Y.

28

Consent to Serving of Amended Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Pursuant to Rule 15 of the Federal Rules of Civil Procedure, the plaintiff, by his attorney, hereby consents to the service of an amended answer by defendant, J. Lauritzen, sued herein as "Johannes" Lauritzen.

Dated: New York, N. Y., May 7, 1951.

29

RICHARD M. CANTOR,
Attorney for Plaintiff.

So ordered:

Dated: New York, N. Y., May 11, 1951.

EDWARD WEINFELD,
U. S. D. J.

Filed 5/11/51.

30

31

Amended Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Defendant, J. Lauritzen, sued herein as "Johannes" Lauritzen, by Haight, Deming, Gardner, Poor & Havens, his attorneys, for his amended answer to the complaint of the plaintiff herein, alleges upon information and belief as follows:

32

ANSWERING THE FIRST CAUSE OF ACTION:

FIRST: Denies each and every allegation of paragraphs First and Eighth of the complaint.

SECOND: Admits the allegations of paragraphs Second, Third, Fourth and Fifth of the complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the allegations of paragraphs Sixth, Seventh and Ninth of the complaint.

FOURTH: Answering paragraph Tenth of the complaint, defendant admits that the act referred to was and is in force, but denies that it has any application to this action.

33

ANSWERING THE SECOND CAUSE OF ACTION:

FIFTH: Defendant repeats and realleges each and every admission, denial and denial of knowledge or information hereinabove set forth with the same force and effect as if herein set forth at length.

SIXTH: Denies knowledge or information sufficient to form a belief as to the allegations of paragraph Twelfth of the complaint.

FURTHER ANSWERING THE COMPLAINT AND FOR A FIRST, SEPARATE, PARTIAL OR COMPLETE DEFENSE TO BOTH CAUSES OF ACTION, DEFENDANT ALLEGES UPON INFORMATION AND BELIEF AS FOLLOWS:

SEVENTH: That if the plaintiff suffered any injuries, the same were caused or contributed to by the negligence of said plaintiff.

35

FURTHER ANSWERING THE COMPLAINT AND FOR A SECOND, SEPARATE, PARTIAL OR COMPLETE DEFENSE TO BOTH CAUSES OF ACTION, DEFENDANT ALLEGES AS FOLLOWS:

EIGHTH: That at all times mentioned in the complaint, defendant was an individual, a resident of and subject to the laws of the Kingdom of Denmark and at all material times the s/s Randa was registered as a Danish vessel and was flying the flag of Denmark.

NINTH: That the plaintiff herein signed articles of employment in and by which he agreed to be bound by the laws of the Kingdom of Denmark.

36

TENTH: That in the law respecting seamen of May 1, 1923, of the Kingdom of Denmark, which law was, during all the times hereinbefore referred to, in full force and effect, it is provided as follows:

"§ 27.

If a seaman falls sick or received any hurt or injury the master must see that the necessary attendance on

board or on land, including maintenance, medical advice and medicine, is given him.

* * * * * * *

In case a sick seaman is left behind in a foreign country, the master must leave him in the consul's care, or, if there is no consul in the place, he must see that reliable attendance is obtained, besides which the nearest Consul must be informed of the case.

§ 28.

During the currency of the contract a seaman's medical expenses must be defrayed by the owner. 38

* * * * * * *

The provisions, mentioned above in this section shall not apply if the sickness or accident is due to his own fault or neglect or was suppressed at the time when the contract of service was made. Under such circumstances, the seaman must himself defray the medical expenses both before and after the termination of the service, and he shall not be entitled to claim free transport home, besides which the expenses incurred by the owner for the seaman may be deducted from the wages.

* * * * * * *"

"§ 32.

If a seaman on account of sickness, injury, or hurt 39
is prevented for some considerable time from performing his duty, or if he is suffering from an illness which is dangerous for those on board, the master can dismiss him. Besides full wages until the time of leaving, a seaman is, in such a case, entitled to one month's extra wages, if he is a mate or an engineer, otherwise he is entitled to seven days' extra wages, after leaving. If the seaman is a Danish subject and

such seaman was engaged whilst the ship was trading in European waters, cf. 2nd paragraph of § 21, and if he leaves whilst the ship is plying in other waters, he shall be entitled to 2 months' wages if he is a mate or engineer, otherwise he shall be entitled to 1 month's wages.

If the sickness, hurt, or injury is brought about by his own fault or neglect or was suppressed at the time of the engagement, the seaman, whether he is dismissed or not, is only entitled to wages for the time during which he has performed his duty."

"§ 18.

Wages shall run from and including the day on which the seaman commences his service on board, or, if he has to make a journey to the ship from the place of engagement, from and including the day when he commences such journey.

Wages shall be paid up to and including the day on which the service terminates, or if discharge takes place, up to and including the date of discharge, provided that his right to wages has not ceased at an earlier date through illness or other cause.

* * * * * * *"

There is further in full force and effect a law relating to the insurance of seamen against accident of May 20, 1933, which provides for the establishment of a shipowners' insurance fund to take care of obligations beyond those covered by the foregoing seamen's law, not only as to medical treatment, but provides as well for an award of up to 60% of the wages for such period of time deemed proper and in some cases for a lump sum award.

ELEVENTH: That the defendant has in all respects carried out the provisions of the law of the Kingdom of Den-

mark hereinbefore referred to in so far as they refer to the plaintiff herein and has fully and completely carried out his obligations to said plaintiff under the terms of said law.

WHEREFORE, defendant demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant,
By s/ J. M. ESTABROOK,
A Member of the Firm,
80 Broad Street,
New York 4, N. Y. 44

Pre-Trial Order.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

On September 26, 1951, the parties to this action or their attorneys having appeared before the court at a pre-trial conference pursuant to Rule of Civil Procedure 16, the following action was taken: 45

1. IT IS ORDERED that the following amendments to the pleadings are allowed:

NONE.

2. The parties agreed that the trial of this action shall be based upon the pleadings as amended, except that the following issues raised by the pleadings are abandoned:

NONE.

3. The parties stipulated the following facts:

Plaintiff was a member of the crew of the S.S. "Randa", a vessel flying the Danish flag and so registered, and owned and operated by the defendant. Plaintiff signed articles in New York City as an able seaman and shipped from this port for a voyage to South America and other places. The vessel eventually returned to New York. The plaintiff was a Danish citizen, a resident of Denmark and was temporarily in New York when he signed up. On the voyage he was injured while the vessel was in Havana, and while putting a cover on a hatch, on October 7, 1946. Plaintiff was hospitalized at the Anglo-American Community Hos-
47 pital at Havana, Cuba, and was there treated from October 7, 1946 to November 18, 1946. Plaintiff was returned to New York as a passenger on another vessel of defendant, arriving here November 28, 1946. He was treated at Ellis Island Marine Hospital from November 28, 1946 to December 9, 1946 as an in-patient. From December 9, 1946 to January 9, 1947, plaintiff received certain treatment as an out-patient at Long Island College Hospital in Brooklyn, N. Y.

All transportation and hospitalization was paid by defendant. Plaintiff received his wages only until October 7, 1946. His rate of pay was $20.70 per week, plus overtime, bonus and board and lodging. The defendant paid plaintiff maintenance at the rate of $4.80 a day for the
48 period, December 9, 1946 to January 9, 1947. Plaintiff returned to work as a seaman serving aboard the S.S. "Cornelius Maersk", as an able seaman, on Jan. 27, 1947.

4. The parties agreed that the following documents may be received in evidence:

The shipping articles which were marked Ex. A on July 11, 1949, during the deposition of plaintiff.

The clinical report of the Anglo-American Hospital of Havana.

The records of the Ellis Island Marine Hospital and the Long Island College Hospital.

As to Clinical and Hospital records the parties reserve the right to object to any hearsay statement contained therein, and to any irrelevant and immaterial matters.

5. The parties agreed to limit the number of expert witnesses as follows:

For plaintiff—Dr. Samuel Frant or Dr. Nathan Tandet.

For defendant—Dr. Charles E. Farr and Dr. Irving Schwartz. An expert stevedore. An expert on Danish law.

6. The following are all of the claims for damages or 50
for other relief asserted by the plaintiff in this action, as of the date of this conference:

(1) Loss of wages to date.

(2) No claim that earning capacity has been impaired.

(3) Pain and suffering to date and in the future.

(4) Maintenance.

(5) No medical expenses.

(6) Permanency of injury.

7. The parties also agreed on the following matters:
NONE.

8. The issues to be tried are formulated by the court as 51
follows:

(1) Was plaintiff injured through any act of negligence of another member of the crew, who was handling one end of the hatch board at the time of the accident?

(2) Did any negligent act of the plaintiff contribute to or help bring about the accident; and if so to what extent?

(3) What were plaintiff's injuries?

(4) What are plaintiff's damages?

(5) Does the Jones Act apply to and govern plaintiff's right of recovery, if any?

(6) Does Danish law apply to and govern plaintiff's right of recovery, if any?

Dated, September 27, 1951.

VINCENT L. LEIBELL,
United States District Judge.

RICHARD M. CANTOR, by MAXWELL OPPER,
Att'y for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
By J. M. ESTABROOK,
Attorneys for Defendant.

Stipulation Amending Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties hereto, that paragraph "Sixth" of the Complaint herein be amended to read as follows:

"SIXTH: That on or about the 7th day of October, 1946, and while said vessel was on navigable waters and while Plaintiff was engaged in the course of the duties assigned to him and in furtherance of Defendant's interests, he was caused to sustain personal injuries under the following circumstances:

Plaintiff and a fellow seaman were engaged in fitting hatch boards into the hatch openings. While Plaintiff was standing on one of several hatch boards already fitted into the strong backs, the fellow seaman handling the other end of the hatch board held by the Plaintiff pushed it against the Plaintiff in a careless and negligent manner so that Plaintiff was caused to lose his equilibrium and fall to the hatch below"; and

IT IS FURTHER STIPULATED AND AGREED, that paragraph "Sixth" of the Complaint, as amended, is deemed denied by the Defendant; and

IT IS FURTHER STIPULATED AND AGREED, that the pre-trial Order previously entered herein be modified so as to include herein in item #1 the amendment to the Complaint set forth herein.

Dated: New York, November , 1951.

RICHARD M. CANTOR,
Attorney for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So ordered: Nov. 16, 1951.

VINCENT L. LEIBELL,
U. S. D. J.

Filed 11/16/51.
U. S. D. C.

58

Stipulation as to Danish Law.

(Defendant's Exhibit C.)

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that if an expert on Danish Law were called by the defendant to testify on his behalf, said expert would testify as follows:

59

According to Danish law a seaman injured on a Danish vessel through the fault or negligence of a fellow seaman has no rights against the shipowner except as set forth below:

1. When a seaman on a Danish ship is injured or becomes ill, regardless of any lack of fault or negligence on the part of the shipowner, the shipowner is required to pay the following benefits:

(a) Hospitalization and medical expenses.

(b) One month's wages, commonly known as "sick wages".

(c) Seven days additional wages, provided the articles call for seven days notice of termination of employment on the part of the seaman and on the part of the shipowner.

60

(d) Maintenance for all the time the seaman is not confined to a hospital and not fit for duty for a period of twelve weeks after the injury.

2. In the event a seaman is not completely cured within twelve weeks of the injury, he is also entitled to further maintenance and an allowance for disability from the Directorate of Insurance Against the Consequences of Accidents.

Such an allowance would amount to Kr. 515 for permanent partial 5% disability of the left wrist and ankle, Kr. 1,029 for permanent partial 10% disability of the left wrist and ankle, and Kr. 1,544 for permanent partial 15% disability of the left wrist and ankle.

3. Claims against the shipowner may be made directly. Claims against the Directorate may be made either directly or through the Danish Consulate.

4. This stipulation may be offered in evidence by either party as proof of the contents hereof without further proof.

Dated, New York, N. Y., November 15, 1951. 62

RICHARD M. CANTOR,
Attorney for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So ordered: Nov. 26, 1951.

SIDNEY SUGARMAN,
U. S. D. J.

Filed 11/26/51.
U. S. D. C.

63

64

Testimony.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Before: HON. EDWARD J. DIMOCK, *D. J.*, and a Jury.

New York, December 5, 1951;
4.15 o'clock P. M.

APPEARANCES:

65 RICHARD M. CANTOR, Esq., Attorney for Plaintiff; RICHARD M. CANTOR, Esq., and MORRIS HIRSCHHORN, Esq., of Counsel.

HAIGHT, DEMING, GARDNER, POOR & HAVENS, Esqs., Attorneys for Defendant; JAMES M. ESTABROOK, Esq., and DAVID P. H. WATSON, Esq., of Counsel.

(A jury was duly impaneled and sworn.)
(Adjourned to December 6, 1951, at 10.30 A. M.)

---

66 New York, December 6, 1951;
10.30 o'clock A. M.

(Mr. Cantor opened the case to the jury on behalf of the plaintiff.)

(Mr. Estabrook opened the case to the jury on behalf of the defendant.)

THE PLAINTIFF'S CASE.

EVALD JOHANN LARSEN, called as a witness in his own behalf, being first duly sworn, testified as follows:

Direct examination by Mr. Cantor.

Q. Mr. Larsen, what is your full name? A. Evald Johann Larsen.

Q. How old are you? A. 37 years old.

Q. What is your occupation or your trade? A. Able seaman.

Q. Able-bodied seaman? A. Yes, sir. 68

Q. Have you a license or certificate to that effect? A. Yes, I have.

Q. Issued by what government? A. What?

Q. Issued by what government, by what country? A. By the Danish country.

Q. How long have you had your able-bodied certificate? A. Since 1940.

Q. Since 1940, did you say? A. 1940 as an able-bodied seaman.

Q. Now, before receiving your certificate as an able-bodied seaman, did you sail in any other capacity? A. Yes, sir.

Q. In what other capacity did you sail? A. Ordinary seaman.

Q. When did your service on vessels as an ordinary 69 seaman commence? A. In Denmark.

Q. In Denmark, yes, but in what year? A. The first time I sailed was in 1935.

Q. So that you have been sailing either as an ordinary or as an able-bodied seaman for the past fifteen or sixteen years? A. Yes, sir.

Q. And you had been sailing for about eleven years before this accident occurred; is that right? A. Yes, sir.

Q. Do you remember July of 1946 when you signed on the SS. Randa? A. Yes, sir.

Q. Where were you living at the time? A. I was living here in New York.

Q. And did you ship on this vessel through a Commissioner? A. Yes, sir.

Q. In what capacity did you ship on the vessel, what job did you take? A. Able seaman.

Q. And what were the wages that you contracted to receive? A. (No response.)

71 Q. How much did they pay you per month? A. In dollars, about $80 or something.

Q. About $80 a month? A. Yes, sir.

Q. And did your agreement with them also contemplate overtime payments? A. Yes, sir.

Q. In overtime payments on this vessel and on similar vessels, what were your average earnings? A. In overtime, about $.50.

Q. 50 cents an hour, did you say? A. Yes, sir.

Q. Is that what you meant? A. Yes, sir, in overtime.

Q. Well, how much would that average a month in the course of the usual voyage? A. In overtime, in a month?

Q. Yes, how much would you earn as an average? A. That is different all the time.

Q. Well, take an average. Take them all together. A.

72 About $50, or something like that.

Q. About $50 a month additional for overtime? A. Yes, sir.

Q. Now, when you shipped on the Randa do you recall the exact date that you signed the articles? A. I don't remember the date I shipped.

Q. Do you know the month? A. Yes, sir.

Q. What month was it? A. July.

Q. July, and the year was what? A. 1946.

Q. Do you know whether it was the beginning of the month; or the middle, or toward the end? A. It was about the middle of the month.

Q. And did the vessel remain here in New York for a period of time before it actually sailed? A. Yes, sir.

Q. How long was it here, or, if you can recall, do you know the exact date when the ship left New York? A. No, I can't remember the date.

Q. Did the ship leave New York around the end of July? A. Yes.

Q. Do you know the voyage that was contemplated by the articles you signed? A. (No response.)

Q. Do you know the scope of the voyage? Do you know what I mean by "scope"? A. (No response.) 74

Q. What ports were you to go to, and what ports or what port were you finally to return to when the ship ended its voyage? A. What time I returned?

Q. The voyage began in New York, didn't it? A. Yes, sir.

Q. And were you supposed to go to South American ports? A. Yes, sir.

Q. And some West Indian ports too? A. Yes, sir.

Q. And where was the voyage to end, at what point? A. (No response.)

Q. If you had stayed on the ship, where would the voyage end? A. In South America.

Q. What would be the last port which the ship would make? A. The last port was Coquinbo. 75

Q. Was it understood that the ship was to eventually return to New York? A. What?

Q. Was the ship supposed to come back to New York? A. Yes, sir.

Q. After it finished going to all these ports? A. Yes, sir.

Q. And that is where you were to be paid off; isn't that so? A. Yes.

Q. Did there come a time when the ship came to the Port of Havana, Cuba? A. (No response.).

Q. Do you remember when the ship came to Havana, Cuba? A. About the 5th of October.

Q. About the 15th of October? A. No; the 5th.

Q. The 5th of October? A. Yes.

Q. And how long did the ship remain in Havana, Cuba? A. Two days.

Q. Was there a time on the 7th day of October, 1946, when preparations were made for the ship to sail? A. Yes, sir.

Q. And you were working in the deck department? A. Yes, sir.

77 Q. Were you working on day work or sea watches? A. Day work.

Q. What hours does a day's work take in? A. From 7.00 in the morning to 5.00 o'clock in the evening.

Q. From 7 o'clock in the morning until 5 o'clock in the afternoon? A. Yes, sir.

Q. Anything beyond that either way is overtime; is that right? A. Yes.

Q. Now, during the afternoon some time did you receive orders from anybody to cover a hatch? A. Yes, from the third mate.

Q. From the third mate? A. Yes.

Q. Did you have a boatswain on that vessel? A. No, there wasn't a boatswain on that vessel.

78 Q. So the third mate had charge of you men in the deck department on that day? A. Yes, sir.

Q. Do you remember his name? A. I forget his name.

Q. But you know he was the third mate? A. Yes, sir.

Q. And you received all your orders from him that day, didn't you? A. Yes, sir.

Q. Now, before you got to the No. 1 hatch had you received orders to cover another hatch? A. Yes, one hatch before.

Q. And who worked that hatch with you? A. The third mate.

Q. Was there another seaman with you? A. Yes, sir.

Q. Do you remember the name of that seaman? A. No, I can't remember his name.

Q. Can you describe him with respect to his nationality or his age? A. (No response.)

Q. How old was he, would you say? A. He was about sixty-four or sixty-five years old.

Q. Was he Swedish or Danish? A. He was Swedish.

Q. And was he an able-bodied seaman? A. No, he was a fireman.

Q. He was a fireman? A. Yes, he was a fireman. 80

Q. But had he shipped in the deck department or the engineroom department on this voyage? A. He was in the deck department.

Q. He was in the deck department? A. Yes, he was in the deck department.

Q. Was there anybody else besides the ones you mentioned, yourself and this Swedish seaman and the third mate? A. That's right, nobody else.

Q. Now, I am speaking about the other hatch which you covered, not the one in which the accident happened. How did you go about covering that hatch? A. First I took the strongbacks and placed it there. The third mate held the winch and me and the other man placed the strongbacks on the hatch.

Q. In other words, a cable or a runner went from the 81
drum of the winch through the block and tackle and down to a hook which you fastened into some ropes which held the strongbacks; is that right? A. That's right.

Q. And then he, by running the winch, pulled these strongbacks above the level of the deck; is that correct? A. Yes, he lifted the strongbacks.

Q. And then you guided them over to the— A. We guided them over to the hatch.

Q. And placed them in the hatch? A. And placed them in the hatch.

Q. And after you did that, did you and the other man then fit into these hatches the strongbacks? A. Yes, sir.

Q. Did the third mate see the way in which you put the hatch boards in? A. Yes, he was there.

Q. Now, how did you put in those hatch boards? Will you describe to the ladies and gentlemen of the jury the way which was used by you and this Swedish seaman to put the hatch boards into the different sections? A. Yes.

Q. Tell them what you did. A. (No response.)

Q. That is on the other hatch. A. We put the hatch board alongside the ship below the strongbacks—over the strongbacks, and first we took three hatch boards from the deck, and then we placed the other hatch board up on it.

Q. You put another supply of hatch boards on those three hatch boards; is that right? A. Yes.

Q. Just a moment. You say you put another one of the hatch boards onto these three hatch boards? A. Yes.

Q. Is that right? A. Yes.

Q. All right. Then what happened then? A. Then we placed about four more boards up on the three hatch boards, and then we put them onto the hatch.

Q. You put them onto the hatch? A. Yes.

Q. Tell us how you went about placing those four hatch boards onto the hatch. A. Yes.

Q. One at a time? A. Yes.

Q. What did you do and what did the other fellow do? A. I held one hand on the hatch board and the other fellow, he held the other end of the hatch board.

Q. Yes. A. Then we lifted them over onto the deck and placed them on the deck, and placed them where they should be.

Q. Yes. A. Then we took about four other hatch boards and placed them over the other hatch boards.

Q. It is at this point I want you to tell us what you did after you placed the hatch boards on those other boards. A. The three hatch boards, you take one hatch board——

Q. One at a time? A. Yes.

Q. And you placed it in that opening? A. Yes.

Q. Who was the fellow who went up on the deck to help you with the hatch boards? A. It was the Swedish seaman who went up.

Q. And he was where? A. He was helping with the hatch boards.

Q. But where was he? Was he on the deck? A. He was on the deck.

Q. He was facing you, was he not? A. Yes.

Q. And you were facing him? A. Yes.

Q. Did he seize one end of the hatch boards? A. Yes.

Q. He kept one end? A. Yes. 86

Q. And you kept or grabbed the other end? A. Yes.

Q. Now, when you hold those hatch boards how do you hold them? A. I hold it like that (indicating).

Q. When you say you hold it like that, you mean you held one end next to your body? A. Yes.

Q. Or stomach? A. Yes, held it like that, tight.

Q. How did you walk? A. We were walking toward the hatch, so that one fellow was on the deck and I was on the hatch.

Q. In other words, both of you were walking sideways? A. Yes.

Q. You placed one end there at a time? A. One end at a time.

Q. And did the third mate see you placing the hatch boards in there in that way? A. Yes. 87

Q. Did he correct your method of placing the hatch boards? A. No.

Q. Did he tell you it was wrong? A. No.

Q. Mr. Larsen, how many times during your sea voyages, would you say, spreading over a period of eleven years, up to the date of this accident—is that right? A. Yes.

Q. During that time did you cover hatches in a different way, or in a different method? A. No.

Q. What is that? A. I always used to cover the hatches like that.

Q. And did you cover hatches of one kind or another? A. Yes.

Q. And would you say that you covered hatches hundreds and hundreds of times? A. Yes, and about a thousand times.

Q. It is ordinary procedure, isn't it? A. Yes.

Q. And every time you come to port they have to open the hatches? A. Yes.

Q. Isn't that right? A. Yes.

Q. To get the cargo out? A. Yes.

89 Q. And they also have to open up the hatches? A. Yes.

Q. To put the cargo in? A. Yes.

Q. And a ship can't sail unless the hatches are covered? A. Yes.

Q. Is that correct? A. Yes.

Q. How many hatches to the ship ordinarily are there? A. Well, on this vessel there were four hatches, in this ship.

Q. Is this a Liberty ship? A. No.

Q. No? A. No.

Q. But you say there were four hatches on this ship? A. Yes.

Q. And every one of them had three sections, right? A. There are three sections, yes.

Q. And they all have to be covered before the ship sails?

90 A. Yes.

Q. And you say that you have covered hatches hundreds of times? A. Yes.

Q. And perhaps a thousand times? A. Yes.

Q. During the eleven years that you have been at sea? A. Yes.

Q. Now, during that period have you ever used any other method than the one that you have described to the jury here? A. No.

Q. Have you ever seen anybody else use any other method? A. No.

Q. And the mate saw you use this method on the hatches before? A. Yes.

Q. Now, let us get down to this particular operation, Mr. Larsen. A. Yes.

Q. Did there come a time during the afternoon when the third mate told you to cover the No. 1 hatch? A. Yes.

Q. What exactly did he say to you and the other fellow? A. He said that we would have to start covering the No. 1 hatch.

Q. And that, as you understood it, was an order? A. Yes.

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Q. Didn't you understand it to be an order? A. Yes.

Q. And the order was addressed or spoken to the other Swedish seaman as well, wasn't it? A. Yes.

Q. And you worked with him together all that afternoon? A. Yes.

Q. All right. Then what did you do and what did the seaman do and what did the third mate proceed to do about that order? A. He took the winch, the third mate took the winch, and he lifted one board up on the hatch, and then me and the other man placed them up on the hatch, the strongbacks.

Q. And when you got through placing these strongbacks, how many sections did you have in the No. 1 hatch? A. Three sections.

Q. Three sections? A. Yes.

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Q. And that was the same method that you used with the other hatches? A. Yes.

Q. And was that the same method of covering the hatch that you used in all other ports? A. Yes.

Q. The same method, was it? A. Yes.

Q. And the same type of hatches? A. Yes.

Q. And did the officers always see you all the time or every time that you did it? A. Yes.

Q. Is that correct? A. Yes.

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Q. After you got the sections fitted in, what did you and the Swedish seaman proceed to do? A. We placed three boards from the deck, or over the hatch boards and over the deck and placed them over the hatch.

Q. You say you took three hatch boards and placed them over the hatch? A. Yes.

Q. Which side of the hatch was it? A. Port side.

Q. The port side? A. The port side.

Q. The port side is the left side of the ship, is it not? A. Yes.

Q. That is the left side looking toward the front or the bow of the vessel? A. Yes.

95 Q. That is the port side, right? A. Yes.

Q. And after you placed those three boards in position what was the next thing you did? A. And then the Swedish seaman and I, we placed about four boards up over the three boards.

Q. And then after you did that what did you do? A. Then I opened the hatch and the Swedish fellow, he is still on deck in the bow of the boat.

Q. Yes? A. And then we started to place the other four boards.

Q. Did you place any of the other four boards in place before the accident happened? A. Yes.

Q. How many? A. I placed one or two.

Q. And was the officer or third mate there when you were carrying that board? A. He left there for about
96 four or five minutes and then he was there.

Q. Well, did he see you carrying that board in the open space? A. Yes.

Q. How did you carry that board? A. I carried that board like that (indicating); I was at one end of the board and the Swedish fellow, he held the other end of the board.

Q. Were you carrying that board the same way that you carried the boards on other occasions when the accident happened? A. Yes.

Q. And was the third officer there? A. Yes.

Q. And did he say anything to you about the way you were carrying the board? A. No.

Q. In other words, did he correct you? A. No.

Q. Did he tell you that you were doing it wrong? A. No.

Q. Did he suggest any other method that you should use? A. No.

Q. Now let us get down to the time when the accident happened. A. Yes.

Q. Tell us what happened after you placed the one board in that way and then when you took another board. A. Yes. 98

Q. What did you do about it? A. Then when I was walking sideways to place the board on the hatch, when I started placing it on the hatch, then I got a push in my stomach.

Q. You got a push? A. I got a push in my stomach.

Q. Tell us how you happened to get a push in the stomach. A. Yes.

Q. What did the other fellow do? A. Well, he was walking in front of me.

Q. He was walking toward you, is that right? A. Yes.

Q. And did you expect him to do that? A. No.

Q. Did you see him doing it? A. Yes.

Q. Did you try to do something when you saw him doing it? A. I couldn't do anything. I fell.

Q. There was nothing you could do about it? A. No. 99

Q. Did you try to stop yourself from falling? A. Yes.

Q. And you did not succeed, did you? A. No.

Q. As you were standing there and you were facing this other seaman, that is the way you were facing, weren't you? A. Yes.

Q. Where was your back? Was your back toward the end of the hatch cover or to an open space? A. My back was to the open space.

Q. And that open space would be the second section of the hatch? A. Yes.

Q. Or the middle section of the hatch? A. Yes.

Q. And when you lost your balance after this push in the stomach, what happened to you? A. I fell backward into the hatch.

Q. Down below? A. Down below.

Q. Is that the 'tweendeck where you fell? A. No, the bottom.

Q. The bottom of the ship? A. Yes.

Q. What parts of your body were struck when you fell in that manner to the bottom of the ship? A. My left wrist and my left foot.

Q. Did you strike your face and head? A. Yes, and
101 I struck myself on the left side of my face here (indicating).

Q. And when you hit the bottom of the ship as you have just told us, did you become unconscious? A. What?

Q. Do you know anything about being unconscious? A. Yes.

Q. You do? A. Yes, that is unconscious.

Q. You lost consciousness? A. Yes.

Q. Did you black out? A. Yes, black out.

Q. Have you any idea how long you were out? A. I don't know how long, but I guess a few minutes, four or five minutes.

Q. And did there come a time when you eventually came to? A. There were some officers there who helped me.

Q. What did you say? A. There were two officers there
102 who helped me.

Q. There were two men helping you up at the time? A. Yes.

Q. Two men? A. Yes.

Q. So at that time how did you feel? Did you feel pain in any part or parts of your body, Mr. Larsen? A. Yes, I felt pain very much in my wrist and in my foot.

Q. What about your hip and your face, or your head? A. I felt very dizzy in my head.

Q. And what did these two workers do for you? A. They placed me up on a sling.

Q. They hauled you up in the sling? A. One man hauled up the sling and I came up with the winch.

Q. In other words, they hauled you up or lifted you up like they would cargo? A. Yes.

Q. From the bottom of the vessel? A. Yes.

Q. You were then lifted up through the opening of the hatch, is that right? A. Yes.

Q. You were carried up to the deck? A. Yes.

Q. And somebody lowered the sling and you were placed on the deck? A. Yes.

Q. And after you were placed on the deck what did they do for you? A. They helped me down the gangway, the two fellows. 104

Q. Did you walk with them? A. No.

Q. They carried you? A. Yes.

Q. You did not use your legs in any way, did you? A. No.

Q. And when they carried you down the gangway, what did they do for you when you got to the deck? A. After that they got an ambulance, and they put me in the ambulance.

Q. And when they put you in the ambulance, then where did you go? A. I went to the hospital, the Anglo-American Hospital.

Mr. Cantor: What is the name of that hospital?

Mr. Estabrook: Anglo-American.

Q. That is the Anglo-American Hospital? A. Yes. 105

Q. The Anglo-American Community Hospital? A. Yes.

Q. In Havana, Cuba? A. Yes, sir.

Q. And when you got there did they put you to bed? A. Yes.

Q. Take your clothes off, and so on? A. Yes.

Q. And after they did that what was done for you? A. Then they put a cast on me. The next day they put a cast on.

Q. Did you say the next day or a day and a half later? A. The next day.

Q. The next day? A. Yes.

Q. Did they take pictures of you? A. They took X-ray pictures of me.

Q. They took X-rays? A. They took X-rays.

Q. When did they take the X-rays? When did they take the X-ray pictures, the same day? A. Yes, the same day.

Q. Where did they take the X-ray pictures of? What parts of your body did they take the X-ray pictures? A. My hip, my wrist, left wrist, and left foot.

Q. And the next day what did they do for you? A. They put a cast on my left arm from here to here (indicating), and on my left leg from the foot to the knee.

Q. Up to your knee? A. Yes.

Q. In other words, that solid cast was on you from the tips of your fingers to here (indicating)? A. From the tips of my fingers, yes.

Q. And another one from your toes up to your knee? A. Yes.

Q. How did you feel during that time, Mr. Larsen? Did you feel pain in any other parts of your body? A. I felt very much pain in my wrist and ankle.

Q. What about your head? A. And some headaches, too.

Q. Do you recall how long you were in the Anglo-American Community Hospital before you were discharged? A. I was there about one and a half months.

Mr. Cantor: Well, for the purposes of the record I think I had better offer this at the present time so we will have the exact date.

I offer the record of the Anglo-American Community Hospital.

Mr. Estabrook: No objection.

Mr. Cantor: Will you mark this, please?

(Marked Plaintiff's Exhibit 1 in evidence.)

Q. This record shows that you were discharged on November 18th of 1946. A. Yes.

Q. That was about one month and eleven days, approximately? A. Yes.

Q. And that covers the period that you were there? A. Yes.

Q. Now, when you were discharged from this hospital did you go on the ship again? A. I went as a passenger. I was a passenger from Havana to New York.

Q. Was that another one of the ships owned by this defendant? A. Another one of the same company's ships.

Q. The same company? A. Yes.

Q. They took you from Havana to New York? A. To 110
New York.

Q. Is that right? A. Yes.

Q. Do you recall when you arrived in New York? A. I can't remember the date.

The Court: November 28th it has been stipulated.

Mr. Cantor: All right.

Mr. Estabrook: Here are the medical records.

Mr. Cantor: Thank you.

Q. When you arrived in New York were you then admitted to the United States Marine Hospital, the Ellis Island, New York, branch? A. Yes.

Q. And the date of that admission is given as November 26th, at around 2.45 P. M. That is correct, no doubt? A. Yes. 111

Q. Is that correct? A. Yes.

Q. Do you know, or, before I get to that, was there anything else that they did for you in the hospital in Cuba other than what you have described? A. No.

Q. There were some X-rays taken and they put a cast on? A. Yes.

Q. Was there any other type of treatment? A. No.

Q. Did you get any massage or medicines of any kind? A. No.

Q. You just remained quiet? A. Yes.

Q. Until you left? A. Yes.

Q. When you got to New York, as I have just developed, you were admitted to the Marine Hospital in Ellis Island? A. Yes.

Q. And when you got there what did they do for you? A. They took off my cast.

Q. Yes? A. The cast of my left arm, and on my left foot.

Q. Did they take that off as soon as you got here, or did they wait some time? A. They took the cast off about two days later.

113 Q. And what did they do for you? A. And then they told me to put my foot in warm water.

Q. They told you what? A. They took my left foot and put it in warm water, and to put my wrist in warm water.

Q. They gave you baths in warm water? A. Yes.

Q. Were they called whirlpool baths by any chance? A. What?

Q. Did they call them whirlpool baths? A. Yes.

Q. Is there anything else besides that, that is, besides these baths, that they did for you to help you recover? A. No.

Q. Did you get any diathermy treatment? A. I got X-rays there, too.

Q. Yes. How long did you stay at the Marine Hospital at Ellis Island? A. I came out on the 9th of December.

114 Q. Now, when you were discharged from the Marine Hospital on December 9th where did you go? A. I go to the company.

Q. Where? A. To the company of the ship.

Q. Now, without going into any conversations that you may have had there, did they make certain payments to you at that time? A. Yes, sir.

Q. Did you get a sum equivalent to seven days' wages? A. I was paid for about three weeks, or something like that. I got paid for three weeks.

Q. What was that? A. I got paid for three weeks and something.

Q. I don't understand you, Mr. Larsen. My question to you is, or maybe you can help out on this. I thought perhaps you could give me some idea of what was paid to you. A. (No answer.)

Mr. Cantor: Well, we will straighten it out.

Q. Now, when you went to the company offices did they make you any payment of any kind? A. (No answer.)

Q. Did they give you any money? A. Yes.

Q. How much money did they give you and for what purpose? A. $4.80 a day. 116

Q. They gave you $4.80 a day? A. Yes.

Q. At the time they gave you that were you staying at the Swedish Seamen's Home? A. Yes.

Q. And were you at that time taking out-patient treatment at the Long Island College Hospital? A. Yes.

Q. For how many days did they give you $4.80 a day? A. I can't remember how many days, but about fourteen days, or less than three weeks.

Q. About how much? A. Fourteen days.

Q. Fourteen days would be two weeks. A. Two weeks or three weeks. I can't remember that.

Q. About three weeks? A. Yes, sir.

Mr. Cantor: All right. We will take that subject to correction as to what the real figures are. 117

Q. Now, did they also pay you a sum of money for wages? A. Yes.

Q. Was that to cover seven days' wages? A. Yes.

Q. Now, before that and when you were in Havana, Cuba, did you receive wages from this company to cover what work you had done up until the day of the accident on October 7, 1946? A. Yes, sir.

Q. You were paid until October, 1946? A. Yes, sir.

Q. Were you paid anything beyond that time? A. Seven days' extra time.

Q. Just the seven days you are talking about— A. Yes.

Q. —was all that you received as wages after October 7, 1946? A. Yes, sir.

Q. Is that right? A. Yes, sir.

Q. Now, during the course of our discussion you mentioned the fact that you were also treated at the Long Island College Hospital? A. Yes.

Q. You apparently went there for treatment, didn't you? A. Yes.

Q. Who told you to go there? A. The captain of the ship
119 that I was a passenger on to New York sent me to Ellis Island.

Q. He was acting for this company? A. Yes.

Q. Is that right? A. Yes.

Q. How long did you take treatment at the Long Island College Hospital? A. I left there after about three times.

Q. Over what period of time? A. What? —

Q. Well, let me put it this way: from the time you first started until the time you took your last treatment— A. Yes.

Q. —how much time went by? A. It was about three weeks.

Q. Three weeks? A. Yes.

Q. And you were an out-patient, weren't you? A. Yes.

120 Q. Out-patient treatment means that you did not stay in the hospital? A. No, I went out.

Q. You were stopping at the Swedish Seamen's Home? A. Yes.

Q. Now, at the end of three weeks what did you do? A. They then said that I was fit for duty.

Q. They said you were fit for duty there? A. Yes.

Q. Did you feel fit for duty? A. Yes, I felt that I was fit for duty at this time.

Q. Did you go back to work thereafter? A. Yes, about a week after, something like that.

Q. And do you know the date or the exact date when you shipped out once more? A. No, I can't remember the date exactly, but it was in January.

Q. In January? A. The middle of January.

Q. About the middle of January, 1947? A. Yes.

Q. Do you know the name of the vessel you shipped on? A. Yes.

Q. What was the name of the ship? A. The Cornelius Maersk.

Q. In what capacity did you ship out on this vessel? A. I was an able-bodied seaman.

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Q. Able-bodied seaman? A. Able-bodied seaman.

Q. And did you ship out the same way that you shipped out before? A. Yes.

Q. Have you been shipping out on other vessels since that time, Mr. Larsen? A. Yes, for the most part of the time.

Q. What is that? A. The most part of the time.

Q. You ship out fairly regularly? A. Yes.

Q. Considering the nature of your calling, is that right? A. Yes.

Q. Now, Mr. Larsen, you have testified that you received injuries to your wrist? A. Yes.

Q. And to your leg? A. Yes.

Q. And to your head? A. Yes.

Q. Will you tell the jury and the Court whether you 123 have any difficulty, or what experience you have had, with respect to these injured parts of your body at the present time? A. Yes.

Q. I mean by at the present time, this current period. A. Yes.

Q. Tell us about that. A. Yes.

Q. Do you understand my question? A. Yes.

Q. How do you feel about it today, or where do you feel any pain today? Let us put it that way, or how do

you feel? A. Sometimes I have very much pain in my wrist and in my left foot, and most of the time in bad weather, or something like that, and about four or five times during the month I have very much pain in the head, headaches.

Q. You have headaches? A. Headaches, yes.

Q. How do those headaches manifest themselves to you? Are they painful? How do you feel? A. They are most painful.

Q. Do you ever get headaches when you are aloft on a vessel? A. Sometimes when I am aloft I get headaches, too.

Q. And what do you do at such times? A. I have to
125 go down, and after I go down for a while I would go back again.

Q. You, as an able-bodied seaman, have certain duties that you must perform? A. Yes.

Q. On a vessel? A. Yes.

Q. And among those duties are you required to go aloft from time to time? A. Yes.

Q. Is that a duty that is peculiarly the duty of an able-bodied seaman? A. Yes.

Q. What do you have to go aloft for? What is the purpose of your going aloft on a ship? A. That is very different work.

Q. Well, what are you required to do? Are you required to paint up there sometimes? A. Paint.

Q. Well, do you attach lines, too? A. Yes.

126 Q. And blocks? A. Yes.

Q. And are you required to go up there on the boatswain's ladder sometimes? A. Yes, on the boatswain's ladder.

Q. And whenever there is an occasion to have you go up there to do something? A. Yes.

Q. And are those times when you are required to go aloft fairly frequent in the course of your duties as an able-bodied seaman? A. Yes.

Q. Now, these pains in your wrist and leg that you talked about, and your foot, and the headaches, do they interfere in any way at all with the execution of your duties? A. What?

Q. Do they bother you in your work? A. Yes.

Q. How do they bother you, or how does it interfere with your work? A. I feel a little dizzy sometimes.

Q. Do you feel pain when you have to use your wrist and leg? A. Yes.

Q. During the course of your work are you required to be on your feet and on your legs? A. Yes.

Q. Do you have to stand wheel watches? A. Yes.

Q. And during those wheel watches you are on your feet 128
all the time, aren't you? A. Yes.

The Court: We will take a short recess now.

Mr. Cantor: All right.

(Short recess.)

Mr. Cantor: Your Honor, I understand that at some point Mr. Larsen failed to keep his voice up enough so that some of the jurors may have missed some of his testimony, and I don't know just where we fell from grace and where to start in.

The Court: I imagine the reporter can help there, and we can have the reporter read it over. Do you want him to start reading it over again?

Mr. Cantor: Well, I will leave that to the members of the jury, because I don't know just where the wit- 129
ness began to get faint. Would your Honor address an inquiry to the jury and ask them what they would like to have us do?

The Court: What would you like at this time?

The Jurors: We heard it.

Mr. Cantor: Or we could have repeated where you did not hear.

The Jurors: We heard it.

Mr. Cantor: The court attendant just told me that, your Honor, and that is why I am talking about it or bringing the point up.

A Juror: We could hear all right.

Another Juror: Yes.

Mr. Cantor: All right, then.

By Mr. Cantor.

Q. Now, Mr. Larsen, have you ever had any injury before you had this accident? A. No.

Q. Before you had this accident to your wrist or your leg? A. No.

Q. Is it your left wrist and your left leg? A. Yes.

Q. Or to your face and head, did you ever have any injury? A. No.

131 Q. And when you signed on this ship were you in perfect physical condition? A. Yes.

Q. You had the full use of all your limbs and body? A. Yes.

Q. And so on, is that right? A. Yes.

Mr. Cantor: I think that is all.

Cross-examination by Mr. Estabrook.

Q. Mr. Larsen, when you signed on the Randa in New York you were in New York temporarily, were you not? A. Yes, sir.

Q. And your home is in Denmark, is it not? A. Yes, sir.

Q. Now, I show you a paper and ask you if this is not the article you signed in New York (handing)? A. Yes.

132 Q. And you can recognize your signature on that? A. Yes.

Mr. Estabrook: I offer this Defendant's Exhibit A for Identification, marked in July, 1949, in evidence.

Mr. Cantor: No objection.

(Marked Defendant's Exhibit A in evidence.)

Defendant's Exhibit A.

(Bound in opposite.)

Skibets Registrerings-Bogstaver: O.Z.P.H. · Skibets Kontrol-Nr. ~~120~~ Def 69 A Dansk
Dok 11/49
115 №

Skibsbemandingsliste

for dansk { ~~Damp-~~ Motor- ~~Sej-~~ } skib "RANDA"

af Esbjerg, som efter Maalebrev af maaler

1555 – Reg. Tons Brutto og har Maskiner af I.H.K.

Rederiet { Navn: J. Lauritzen
Hjemsted: København

ført af Skibsfører ~~Eli Anton Hansen~~ A. Hansen
~~Jens Holger Mikkelsen~~
A. H. Lorentzen.

Skibsmandskabet, der er antaget paa Grundlag af de i Sømandsloven indeholdte Bestemmelser og iøvrigt i Overensstemmelse med den nærværende Skibsbemandingsliste for hver især tilførte Hyreaftale, tæller 22 Personer.

For det i denne Liste anførte Skibsmandskab har jeg til enhver Tid at gøre Rede i Overensstemmelse med de om Forhyring og Mønstring af Skibsmandskab gældende Love og Bestemmelser.

A. Hansen
Skibsfører.
~~Jes Mikkelsen~~
A. H. Lorentzen

Fartscertifikat gyldigt til

i Omraade

	Kr.	Ø.
For Anskaffelse og Udfyldning af Skibsbemandingslisten		
— Paaførelse af ..... Mand paa Listen		
— Anskaffelse af ..... Afregningsbøger og deres Udfyldning		
— Bistand ved Affattelse af særskilt skriftlig Forhyringsoverenskomst...		
Ialt...		

De ved denne Bemandingslistes Udstedelse indgaaede Hyreaftaler er godkendt for undertegnede Mønstringsbestyrer.

Mønstret og passeret til

Mønstringskontoret i , den 19

Mønstringsbestyrer.

1. Annotations-Rulle Nr.	2. Stilling om Bord	3. Fulde Navn	4. Fødested	5. Fødselsaar og -dag	6. Rullebetegnelse. Udskrivningskreds	7. Rullebetegnelse. Lægd	8. Rullebetegnelse. Bogstav	9. Rullebetegnelse. Nr.	10. Angivelse af den Rejse eller den Tid, for hvilken den forhyrede er antaget
	~~Styrbords~~			1904					Lystenerbr
	~~Styrbords~~	Edvards P. Balsamus	Chile	25/12		Indskrevet			og retur
	~~Matros~~	August Arnoldus Schamse	Chile	1910 17/4		—	—		— —
	~~Matros~~	Juan Luis Ramos	Chile	1917 4/9		—	—		— —
	~~Lettmatros~~	Jose V. Cornejo Ayala	Chile	1923 29/11		—	—		— —
	~~Styrbords~~	Niels Ole Christensen	Kobenhavn	18/8 1919					Balbao Panama o.V.
	~~Styrbords~~	Erling Henry Olsen	Norge	15/12 1917		—	—		Panama U.S.A. o.V.
X	~~Styrbords~~ 18-46 Lucayer	Jose Marbines Cambios	Spanien	2/6 1906					Panama U.S.A.
	~~Matros~~	Erald Johan Larsen	Falkeborg	7/9 1914					Lybanmuka og Retur
	~~Lettmatros~~	Carpinteiro Pedro Jorgensen	Viborg	5/10 1927					— —
	~~Styrbords~~	Hans Viktor Franquist	Sverig	24/12 1898		—	—		— —

11. Hyrens Størrelse: for Maaneden (Kr.)	11. Hyrens Størrelse: for Rejsen (Kr.)	12. Naar Hyren er betinget med et vist Beløb for Rejsen — Hvor lang Tid Rejsen forudsættes at medtage	13. Tjenesten tiltrædes i Skibet (Dato)	14. Hyren løber fra og med (Dato)	15. De øvrige Vilkaar, paa hvilke den forhyrede er antaget	16. Vi underskrevne erkender at være forhyret i Overensstemmelse med det paa denne Liste anførte og stadfæster det med vor Underskrift	17. Anmærkninger samt Angivelse af Sted og Dato for foretagne Paa- og Afmønstringer
			12/6 1946	12/6 1946	Romandsloven Overenskomsten Arb.-og S.o.R.F.	Eduardo Pais	Paam. Valparaiso 12/6-1946 Afm. 1-9-46. Valparaiso
			12/6 1946	12/6 1946	—		Paam Valparaiso 12/6-1946 Afm. Arrived in New York 0 29/7.-46
			12/6 1946	12/6 194	—		Paam Valparaiso 12/6-1946 Afm. 1-9-46 Valparaiso
			12/6 1946	12/6 1946	—		Paam. Valparaiso 12/6-1946 Afm. 1-9-46 Valparaiso
			4/3 1946	4/3 1946	—		Paam. Valpo. 4/3-1946 Afm. New York 29/7-46
			10/7 1946	10/7 1946	—		Paam. Havana (Cuba) Afm. San Antonio 4/9-46
			9/7 46	9/7 46	—		Paam. Havana 9/7-46 Afm. New York 15/ 46
			25/7 1946	25/7 1946	—		Paam. New York. 25/7-46 Afm. 8/10-46 Havana
			25/7 1946	25/7 46	—		Paam. New York 25/7-1946 Afm. New York. 14/10-46.
			25/7 1946	25/7 1946	—		Paam. New York 25/7-1946 Afm. New York 14/10-46

Q. Now, this Defendant's Exhibit A is in Danish, is it not, Mr. Larsen, the Danish language? A. Yes.

Q. And you can read Danish, can you not? A. Yes.

Q. And opposite your name there is a line? A. Yes.

Q. With certain information on it, is there not? A. Yes.

Q. And the first word indicates your job? A. Yes.

Q. Seaman, isn't that right? A. Yes.

Q. And then comes your full name? A. Yes.

Q. And then your home town? A. Yes.

Q. Silkeburg? A. Yes.

Q. In Denmark? A. Yes.

137 Q. Then your place of birth? A. Yes.

Q. Correct? A. And the date.

Q. And th date and the year of birth? A. Yes.

Q. That is September 11, 1914, isn't it? A. Yes.

Q. Then there is a rate of pay, and then a ditto mark in this column according to tariff, is there not? A. Yes.

Q. And that tariff is the standard rate of pay agreed on between the Danish seamen's union? A. Yes.

Q. And the Skip Owners Association? A. Yes.

Q. And you are a member of that union, are you not? A. Yes.

Q. Then in the next column appears the scope of the voyage, doesn't it? A. Yes.

Q. And what does it say there? A. What?

Q. What does it say in this column that I am pointing

138 to on the scope of the voyage? A. South America.

Q. South America? A. Yes.

Q. And what else? A. And other places, South America and other places.

Q. Now, when you signed on the Randa, how long did you promise to stay on the ship? A. One journey from New York down to South America and then back to New York again.

Q. Where does it appear? Does that appear at any place? A. (No answer.)

Q. Does it appear in these articles that you were on a round trip from New York to New York? A. Yes.

Q. Where does it appear? A. You mean here (indicating)?

Q. No, where does it appear that you came back to New York? A. Havana.

Q. It says where you came from Havana does it not? A. Yes.

Q. But Mr. Larsen isn't it a fact that when you signed Defendant's Exhibit A you were bound to stay on the ship for an indefinite period of time?

Mr. Cantor: I object to that, your Honor. I consented to the admission of the articles, but we only did so for a limited purpose and that was to show the scope of his employment, and also his wages and his capacity. 140

The question of the contractual force of the articles is always one of law for the Court to decide, and the mere fact that a seaman has signed articles does not necessarily mean that he is bound by all of the terms, and I don't know what the scope or the purpose of this cross-examination is, but I think that I am constrained to make my objection at this time.

The Court: Well, you brought out from the fact that it was a round trip, and I think that it is fair for him to show that it did appear in the articles.

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Q. Isn't it a fact, Mr. Larsen, that you signed on the ship, that you were bound to serve on that ship for an indefinite period of time, but you had the right to leave, and the shipowner had the right to discharge you on seven days' notice; isn't that correct? A. Yes, sir.

Mr. Cantor: Now, your Honor, I object to the question in the form that it was asked. It asks for a legal interpretation of the contract.

As a matter of fact, the law of this country has been set forth a number of times that no seaman can be held to the terms of a voyage which is indefinite in scope.

That has been set down in a long list of cases because it is a precedent and is contrary to our public policy.

The Court: This is all something that will have to be passed on by the Court, so I don't see that it is a very serious matter, whether it goes in or not, and therefore I will allow it.

Mr. Cantor: All right, sir. Under proper admonition to the jury at the proper time, I assume, your Honor.

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Your Honor, I further object now on the ground that there has been an order entered in this case, a pre-trial order, which definitely sets forth the scope of the voyage of this vessel, and although I covered in my direct examination that particular thing, it was merely for the purpose of just leading him on to other aspects of the case.

Now, this pre-trial order says that the plaintiff signed articles in New York as an able-bodied seaman, shipped from this port to other places in South America, and——

The Court: Well, the result of your objection would be, then, that we would have to strike out all of the testimony that had any reference to the return voyage

144 to New York; isn't that true?

Mr. Cantor: That's right, your Honor.

The Court: You brought that out even though it wasn't in the stipulation.

Mr. Cantor: The stipulation says that it was to return to New York.

The Court: I don't see that it does.

Mr. Cantor: Oh, yes, it does, your Honor. The vessel eventually returned to New York.

The Court: Yes, but that doesn't deal with the scope of the voyage. She finally got there.

Mr. Estabrook: My point is, your Honor, that Mr. Cantor has chosen, for some reason of his own, to elaborate on the pre-trial order, and I am going to show on proper cross-examination that the man signed on for an indefinite period of time, and as opposed to certain people in those articles he had no right to come back to New York as a right. In fact, the fact that the ship came back is something that he might have expected.

Q. Now, Mr. Larsen, when you were hurt you were taken to a hospital in Havana, were you not? A. Yes. 146

Q. And do you know who paid the hospital bill there? A. The company did.

Q. And did you have to pay any of your expenses coming back to the United States as a passenger? A. Yes, sir.

Q. What expenses did you have to pay? A. No, I mean that was paid.

Q. That was paid by the company? A. Yes, sir.

Q. And did the company also pay your hospital bills in New York? A. Yes, sir.

Q. Now, when you fell down in the hold you hurt your left wrist and left ankle, did you not? A. Yes, sir.

Q. And you were dazed for about five minutes, were you not? A. Yes, about that.

Q. And did you complain of headaches at Havana, do you remember? A. I remember that I had very much headaches the day I come to Havana. 147

Q. Then did you have headaches when you came to New York? A. Not exactly when I come to New York.

Q. Did you make any complaints of headaches when you were hospitalized in New York? A. Not in the hospital.

Q. Did you, after you left the hospital, say that you were treated at the Long Island College Hospital? A. Yes, sir.

Q. Did you make complaints of headaches while you were treated there? A. (No response.)

Q. Did you make any complaints of headaches when you were examined by Dr. Farr? A. Yes.

Q. Did you tell him you had headaches? A. Yes, I told him that I had headaches one or two times.

Q. Have you seen any doctor on your own since you left the Long Island College Hospital in January of 1947 for your wrist, your ankle, or your head? A. No.

Q. Now, after you were discharged from the Ellis Island Memorial Hospital, is it not a fact that the company offered you free transportation to Denmark for further treatment?

149 A. No, I was not in Denmark.

Q. But did they offer to take you to Denmark? A. Oh, yes.

Q. And you refused? A. Yes.

Mr. Estabrook: No further questions.

Mr. Cantor: That's all, Mr. Larsen. Thank you.

(Witness excused.)

Mr. Cantor: At this time, your Honor, I offer in evidence the records of the United States Marine Hospital at Ellis Island.

Is there any objection to that?

Mr. Estabrook: No objection.

Mr. Cantor: Mr. Estabrook has very kindly suggested that part of the record relating to what I under-

150 stand to be a routine examination for a venereal disease be taken out of it, but it is negative anyhow, and I think that the jury realizes that it is done in cases of all seamen.

I offer this in evidence.

(Marked Plaintiff's Exhibit 2.)

Mr. Cantor: We have subpoenaed the hospital records of the Long Island College Hospital, and I believe that they are here in the courtroom.

May I have them?

(Clerk hands records to Mr. Cantor.)

Mr. Cantor: I offer in evidence the records of the Long Island College Hospital.

Mr. Estabrook: No objection.

(Marked Plaintiff's Exhibit 3.)

Mr. Cantor: Dr. Tandet, will you take the stand, please.

Dr. Nathan Tandet, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows: 152

Direct examination by Mr. Cantor.

Q. Doctor, are you duly licensed to practice medicine and surgery in the State of New York? A. I am.

Q. Do you have trouble with your hearing, doctor? A. Yes.

Q. And how long have you been so licensed? For what period of time? A. Since February, 1919.

Q. And that is twenty-two years, approximately? A. About thirty-two years.

Q. Thirty-two years. Pardon me. Doctor, have you any particular specialty that you practice? A. I specialize in X-ray work, and I do general medicine and surgery.

Q. And does that embrace orthopedic bone surgery? A. Yes. 153

Q. Did you make an examination of the plaintiff, Evald Johann Larsen on behalf of my office on or about October 12, 1951, for the purpose of evaluating his injuries and testifying, if necessary, at a later date? A. Yes.

Q. And did you make such an examination? A. Yes.

Q. Did you make a report regarding the results of your examination to my office? A. Yes.

Q. Will you tell the Court and the jury, doctor, what your examination revealed with respect to the condition of the plaintiff, Evald Johann Larsen, as of the date of your examination on October 12, 1951? A. The examination consisted of clinical findings plus the X-ray findings, and the X-ray findings showed the incompletely healed fracture of the first cuneiform bone, and decalcification within the heads of the metatarsals and within the phalanges of the foot, and the X-rays of the left wrist showed incompletely healed fracture of the navicular or scaphoid bone, and some decalcification in the distal part of the radius, and the ulna, and through the bones of the
155 hand and the wrist.

X-rays of the left ankle showed decalcification in the distal part of the tibia and the fibula.

X-rays of the skull showed an accentuation of some of the vascular markings indicating an engorgement of these blood vessels.

Clinically the examination showed, following his complaints of headaches and dizziness, post-concussion syndrome. Different size.

The Romberg was positive, and the tremor of the outstretched hands, past-pointing and finger to nose test, knee jerks diminished.

And then there was some tenderness, edema, which is swelling, a restriction of the left wrist, tenderness of the left side of the face, and tenderness and restriction in
156 the dorsal aspect of the left foot, and tenderness of the left leg.

Q. Doctor, you have referred to various medical terms which I believe would require some clarification, as much for my edification as for the edification of this jury.

As I gather it generally, there were fractures in the left wrist area; is that right? A. Yes.

Q. And also fractures in the left leg area? A. Left foot area.

Q. Left foot area? A. Yes.

Q. Now, let's take one at a time. Which particular bone or bones were fractured in the left wrist? A. (No response.)

Mr. Cantor: Could the doctor have permission to demonstrate these X-rays by means of the shadow-box, your Honor?

The Court: Yes.

The Witness (demonstrating with shadow-box): The first thing to remember is—I mean, the first lesson in X-ray that a doctor gets is what is meant by fracture, and the most important thing, a definition of a fracture means a break in the continuity of bone. 158

Now, in this X-ray here, X-ray No. 36166——

Q. Pardon me, doctor. Are these X-rays X-rays that you took of this plaintiff? A. Of this plaintiff, yes.

(Continuing) I stated that there was a fracture of the scaphoid or navicular bone.

Now, that bone is right near the wrist where the thumb is distally, that is, it is more towards the long bone.

Now, I said a break in the continuity of bone. You can see an indentation right in that navicular bone. I have an arrow pointing where the break is, and that is why I call it a fracture. A break in the continuity of the bone. That is the bone that is up here, the second row, right near the thumb, along the line of the thumb. 159

And then I also said that there was decalcification in the bones of the wrist and hand, and the distal part of the radius and ulna. The radius is this bone on the outside and the ulna is the bone on the inside.

Now, normally we all have calcium in our bones, and when there is lack of use of the part, in other words, like if it has been in a cast or a person can't use it, then the calcium fails to multiply and we get decalcification.

In the X-ray you can tell that very readily by looking at the differentiation where there is enough calcium and where there is a lack of calcium.

Now, if you will look at these bones here, they are thick with calcium, but if you will look at the end, the distal part here, it looks washed out. That thing follows right through to the knuckles of the hand and in the phalanges.

Now, that is what I meant by decalcification. It means lack of calcium. That is as far as the wrist goes, and you can see that notch.

Now, this is an X-ray of the foot, X-ray No. 36168, and in there I found that there is a fracture of the first cuneiform bone. We have seven bones in the foot that go into the tarsal bone. These are the first, second and third cuneiform bones, but this is the one that is fractured, the one near the big toe on the left foot.

Now, I said before that a definition of a fracture is a break in the continuity of the bone. Now, I read that there is a break through and through, and it is never completely healed because you can see the indentation there never filled in.

Now, when the fractures heal, the calcium lays heavy over it, sometimes even too much, but here there is none in that spot where I got the arrows, and that is a fracture, an incompletely healed fracture of the first cuneiform bone.

Then I read that there was decalcification in the phalanges and in the metatarsal bones. You can see the difference in these bones here. They are full of calcium.

But if you will look in it, so to speak, in the knuckles, you will see how washed out they are. That is because the foot was not used as much as ordinarily you would expect that a normal foot would be used.

Then I took X-rays of the skull. He complained of headaches and dizziness. And we have three views, three pictures. This is the front and these are the two lateral views.

The numbers on these are 36169, 36171 and 36170.

Now, looking at these X-rays, I read that an engorgement of the blood vessels—an accentuation—I'm sorry—of the vascular markings, is an indication of an engorgement of the blood vessels. You can't see the blood vessels, but the shadow that the blood vessels throws over the normal grooves in the skull tell us whether they are engorged or not.

Now, you will see a lot of small vessels here. That is normal. There is nothing wrong with that.

On the other hand, over here you will see how widened that is. That is an engorgement of the blood vessels. It means the shadow of the blood vessel is upon the groove 164
where it lies accentuated. You can see that.

Now, see, this is an engorgement. These little ones here is an engorgement. They are normal. But this here, these big vessels, they should be like this, thin, but here they are dilated. So that is when a person gets headaches, and so on, and he will take X-rays and you will usually find that there is an engorgement of the blood vessels or a trauma of some sort, and immediately the question is, is it a fracture or isn't it?

But you see, if the blood vessels are engorged, then you know if there is no fracture line, that that is the reason for the headaches.

Now, these different tests I did for the post-concussion syndrome, that is in a trauma of the head, we do a Romberg test, which I said was positive. We tell the patient to 165
close his eyes and if he sways, then we say that the Romberg is positive. That is an indication that there is some disturbance in the brain.

The other test we do is telling the patient to close his eyes and to touch his nose. Now, if he doesn't touch his nose but hits his fingers over there, that is past-pointing in the finger to nose test.

And then we tell him to stretch his fingers out, and if he shakes, then that is a tremor.

And then the reflexes, we tell him to cross his legs and we strike the point right below the kneecap, and we do it on both legs, and if there is a diminution, in other words, if it is lessened or it is exaggerated, we know that there is some disturbance. So when you put all these together, plus a history of trauma, plus his complaint, history of trauma, I mean injury, plus complaints of headaches and dizziness, the doctor makes a diagnosis of a post-concussion syndrome.

Q. Doctor, will you tell us your qualifications for your specialty, for the work you do? A. Well, presently I am physician for the State Department of Labor in the Handi-
167 capped Division.

I am also doctor for the State Education Department, the Bureau of Rehabilitation.

During the war I was consultant to the United States Department of Labor in the Wage and Hour Division.

I own the Modern X-ray Laboratory and for six years I used to do all the X-ray work or most of the X-ray work for the Pennsylvania, the Long Island and the Lehigh Valley Railroads, until the West Side Hospital opened up.

Q. Now, doctor, let us assume that the plaintiff in this case, my client, Evald Johann Larsen, shipped on a vessel called the SS. Randa in New York on or about July 17, 1946, and at that time he was a young man in his middle thirties in normal good health, he had never had any injury of any kind before to his left wrist or his left foot, or to
168 his head, and the occupation in which he shipped was that of an A.B. seaman, or an able-bodied seaman; that after he was on the vessel for some time and that vessel was in the port of Havana, Cuba, he met with an accident under approximately the following circumstances:

While he was standing on certain hatch boards in the after section of the No. 1 hatch, he was pushed in the stomach by the edge of the hatch board as the result of another seaman pushing his end of the board, and as the

result of being pushed he lost his balance and fell a distance of approximately 12 to 15 feet from where he was standing down to the lower hold, and that when he fell he fell all this distance on the left side of his body, striking his head, his left wrist and his left foot, and he was rendered unconscious as a result of that fall for a period of which he estimates to be about five minutes; his testimony discloses that he became conscious when he became aware of two workers helping him into a sling, and that thereafter he was carried off the vessel, taken to the Anglo-American Community Hospital at Havana, Cuba, where he was hospitalized for a period of about a month and eleven days, and that the records of that hospital, which are part of our 170
records here, show that he received a fracture or disclosed the following:

That on physical examination he had a contusion over his left side of the forehead, on the left side of his face and over the chin; he complained of pain to the left wrist and the left leg close to the ankle, both the joints were swollen and movements limited and painful; his pulse and blood pressure were normal, his heart sounds were normal, his chest examination was negative, his abdomen was not painful, and no rigidity or tenderness could be detected on palpation, neurological examination did not disclose any abnormality, and also the eye fundus examination. The first urine void examination was of a normal aspect; he was X-rayed and the results showed a fracture of the scaphoid bone of the left wrist, and the cuneiform bone 171
from the left tarsus. On account of that he had his left arm and hand put in a cast, and his left leg was also put in a walking cast, and he was using both casts on discharge, and he was discharged on November 18, 1946, to continue his treatment in the United States of America.

Now, let us assume that for a period of approximately three weeks or a month he was treated in the United States Marine Hospital at Ellis Island, from which he was dis-

172 *Dr. Nathan Tandet—For Plaintiff—Direct.*

charged after the period indicated, and thereafter he was treated for another period of about three weeks to a month at the Long Island College Hospital in their out-patient department, and that shortly after his discharge from that point or from that hospital he shipped and resumed his normal occupation, and that thereafter, on October 12, 1951, he came to your office at my suggestion and was examined by you, and you made these various tests, physical examination and clinical examination, X-ray plates, and you made the findings that you have described in detail to this Court and jury.

Now, doctor, could you state with a reasonable degree
173 of certainty whether or not such an accident, such a fall, and such a history, could be or would be a competent producing cause of the injuries which you found upon your examination? A. Yes.

Q. With a reasonable degree of certainty? A. Yes.

Q. Now, in your opinion, doctor, was such an accident, and such a fall, such a trauma, a competent producing cause of the injuries which you found and which you described? A. Yes.

Q. Now, doctor, have you formed any opinion with respect to the permanency of the injuries sustained by this man and which you found upon your examination? A. Well, I felt that he was permanently partially disabled, and as far as the wrist is concerned, I felt that he lost
174 the use of about 25 percent of the loss of the use of the wrist, and about 25 percent loss of the use of the left foot.

Q. Now, those findings, however, were consistent with the fact that he was able to continue with his normal occupation; is that right, doctor? A. Yes.

Q. Doctor, you have read the records of the United States Marine Hospital out at Ellis Island, have you not? A. Yes, sir.

Mr. Cantor: You may examine.

Cross-examination by Mr. Estabrook.

Q. Doctor, you saw Mr. Larsen only once, did you not? A. Yes.

Q. And how many X-rays did you take of him? A. Nine.

Q. And what parts of the body did you X-ray, please? A. I X-rayed—I had X-rays taken of the left foot, left ankle, skull and left wrist, including part of the hand.

Q. And did you have any X-rays taken of the right foot, or the right ankle, or the right wrist? A. No, sir.

Q. But you found, you say, a decalcification in certain of what might be called the knuckle joints both of the foot and of the hand? Is that where you found the decalcification? 176 A. Yes.

Q. And you found that evenly throughout the fingers and throughout the toes? A. Not evenly, but some. I wrote some decalcification.

Q. And that showed itself not by a change in shape but by a change in the shading, did it not, of the bone? A. Yes.

Q. Doctor, you spoke of uncompletely healed fractures of the left wrist and left foot, did you not? A. No, sir.

Q. What did you speak of? A. I spoke of one bone of the right wrist.

Q. Yes? A. That is the navicular bone, and only one bone of the left foot, the first cuneiform.

Q. You spoke of finding an uncompletely healed fracture? A. That is correct.

Q. What is your definition of a completely healed fracture? 177 A. I explained that before. Where the calcium fills in the entire area where the bone was broken or fractured.

Q. So the bone, if the fracture is completely healed, regains a symmetrical shape, does it not? A. That is correct.

Q. But if there is a small notch in the bone, then you would say that was an incompletely healed fracture, is that correct? A. That is right.

178 *Dr. Nathan Tandet—For Plaintiff—Cross—Redirect.*

Q. Even though there might be a bony union between the two pieces? A. That is correct.

Mr. Estabrook: Excuse me for just a moment, your Honor.

Q. Doctor, are you a certified Roentgenologist? A. Yes.

Q. Or a certified X-ray Roentgenologist? A. Yes, sir, I am. I am on the State Department of Labor as a Roentgenologist.

Mr. Estabrook: No further questions.

179 *Redirect examination by Mr. Cantor.*

Q. Doctor, is this the first time you ever examined for my office or testified on behalf of my office? A. Yes, sir, this is the first time.

Mr. Cantor: All right. That is all.

Thank you very much, doctor.

The Witness: Thank you.

Mr. Cantor: Oh, yes, I meant to offer these X-rays in evidence. I must ask you to leave them here, doctor.

The Witness: All right.

(Witness excused.)

Mr. Cantor: Is there any objection?

180 Mr. Estabrook: Certainly not.

Mr. Cantor: They are offered in evidence as one exhibit. I think that will be the best thing to do.

Mr. Estabrook: There are two prints of each plate.

(Marked Plaintiff's Exhibit 4 in evidence, consisting of five X-rays.)

Mr. Cantor: Your Honor, may I suggest that we adjourn at this time so that we may decide on what

other elements of proof we may wish to put in? It is very close to adjournment now.

The Court: Yes. We will adjourn now until ten minutes past two.

(Recess to 2.10 P. M.)

AFTERNOON SESSION.

Mr. Cantor: The plaintiff rests, your Honor.

Mr. Estabrook: Your Honor, at this time the defendant moves to dismiss the complaint on the ground that the 182
plaintiff had not made out a case under the Jones Act and specifically that there is no jurisdiction between the parties since the plaintiff and the defendant are both citizens of Denmark; and it appears that the plaintiff had the benefit of the benefits that were due to him under the Danish law, and that this matter occurred not within the territorial limits of the United States but on board a Danish vessel in a foreign port.

The Court: I will deny your motion, but are you sure that you have evidence in the case of the Danish law? You say that he had all the benefits under the Danish law.

Mr. Estabrook: I will have to make my motion on this ground then, your Honor, merely on the ground that he has not made out a case since he has not shown the proper 183
diversity of citizenship of the parties, and since I have put in some evidence, and then in my case I expect to offer evidence as to the Danish law and then renew the motion at the close of my case.

The Court: Yes. The motion is denied.

THE DEFENDANT'S CASE.

Mr. Estabrook: Dr. Farr.

CHARLES E. FARR, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

Direct examination by Mr. Estabrook.

Q. Dr. Farr, are you a physician licensed to practice under the laws of the State of New York? A. I am.

Q. Will you state your qualifications, please? A. I was
185 graduated from Yale and the Yale Medical School in 1903 and took three and a half years in the New York Hospital and St. Mary's Hospital for Children as a resident and surgeon, interne and surgeon.

Since that time I have practiced in New York City, confining myself to surgery. I rose through the ranks to be attending surgeon at the New York Hospital, professor of clinical surgery in Cornell University Medical School, president of the County Society of New York, founder member of the American Board of Surgery.

I also represent Yale Medical School and its graduates on the advisory board of Yale University.

Q. Doctor, have you examined many persons for my firm and its predecessor firm? A. Yes, sir.

Q. And you have also from time to time examined seamen
186 on behalf of their own lawyers, have you not? A. I did not hear that.

Q. You have also examined from time to time seamen on behalf of their own lawyers? A. Occasionally, not very often.

Q. Doctor, did you at my request examine the plaintiff, Mr. Larsen? A. I did.

Q. And when did you perform that examination? A. February 10, 1950.

Q. Will you describe what you found on that examination? A. I obtained a history from Larsen of his being employed as an able seaman and of his fall in Havana, Cuba, about 20 feet, and the story that his left wrist and his left foot or ankle were broken, and that his left jaw was bruised or hurt; about his being in the hospital there, staying five or six weeks, and then returning as a passenger to New York to go to the Ellis Island Hospital with a cast on his leg, a cast on his wrist and arm, and that he was out of work roughly about four months.

Then I asked him as to any symptoms that he had at the time that I saw him and he told me that occasionally he had slight pain in his wrist, that is, the left wrist, like 188
rheumatism, and also in his foot. He feels this pain in bad weather.

His jaw is all right.

There was no other injury and no claim was made of permanent disability.

Q. Doctor, did you perform any neurological tests on Mr. Larsen? A. I did.

Q. What did you do? A. I tested him for the Romberg sign, which is the swaying sign with the eyes closed, and that was negative.

I tested his eye reflexes to light and accommodation; that is, looking at anything close up and looking at a distance.

I tested his knee jerks. I am not sure whether I tested 189
his ankle jerks, but I tested his muscles.

Q. Did you find any signs of neurological or cerebral injury? A. I did not.

Q. Doctor, did you arrange to have X-rays taken of Mr. Larsen? A. I did.

Q. How did you do that? A. I telephoned to Dr. Irving Schwartz and sent Larsen around the corner from my office to Dr. Schwartz's office, had the X-rays taken, and read by Dr. Schwartz, and then I saw them and read them.

Q. And is Dr. Schwartz in the courtroom now? A. He is.

Q. I hand you some X-ray plates and ask you whether those are the films you received from Dr. Schwartz pursuant to your request (handing)? A. Yes, those are they.

Q. How many of them are there, doctor? A. Seven of the wrist, four of the ankle, and five of the opposite ankle.

Mr. Estabrook: I ask to have those marked for identification at this time as one exhibit.

(Marked Defendant's Exhibit B for Identification.)

Q. With reference to the X-ray plates, did you make an examination of Larsen's wrists and feet? A. (No response.)

Q. Did you make an examination of his wrists and his feet? A. I did.

Q. And what did you find? A. I found a very slight thickening of the soft tissues of the left wrist, and I found a similar slight thickening of the soft tissues of the left foot, and a slight shrinking or atrophy of the soft tissues of the left leg.

Q. Upon examining the X-rays and from your clinical examination were you able to determine whether or not Larsen was suffering from a disability at that time? A. I was.

Q. And what disability did you find? A. I estimated that there was about 10 percent loss in strength and use of the left wrist, and about the same of the left foot.

Q. Did you find any disability as to his head? A. Not a bit; no, sir.

Q. Doctor, assuming that the report of the Havana hospital, Plaintiff's Exhibit 1, states, "Neurological examination did not disclose any abnormality, and also the eye fundus examination", and assume further, doctor, that the

Plaintiff's Exhibit 2, Ellis Island Marine Hospital records covering an admission, November 26, 1946, discharged December 10, 1946, and a second admission July 22, 1948, discharged July 29, 1948, show no indication of complaints of headaches, can you, in your opinion, state whether, in view of these records, and in view of your own findings, Larsen suffered or was suffering in 1950 from cerebral or neurological damage caused by a fall on the Steamer Randa in 1946? A. I can so state.

Q. And what is your opinion, doctor? A. My opinion is that he was not suffering from any neurological damage.

Mr. Estabrook: Now, if we could have the shadow- 194
box we will look at the X-rays.

Q. Now, doctor, would you take the X-ray plates purporting to show Larsen's wrists, and, first of all, I would like the plate showing the left wrist. A. This is a view of the left wrist. Of course, it is a shadow, an X-ray shadow of the left wrist, taken in a somewhat oblique direction.

Q. And, doctor, does the scaphoid bone appear in that X-ray? A. It does. The scaphoid bone is this—well, it is shaped somewhat like a peanut. It connects the main bone of the arm, of the forearm, with the small bones of the wrist.

Q. And does that scaphoid bone, doctor, show signs of a fracture? A. It does not. It is a normal bone.

Q. Have you got a print of the right wrist, doctor? A. 195
This is the right wrist in a similar position, and it shows the normal scaphoid bone, the right wrist.

Q. Do the X-ray films indicate a notch or indentation in the scaphoid bone? A. They do, in both. There is a normal notch in both the right and the left wrist.

Mr. Estabrook: I would now like to see Dr. Tandet's X-rays.

(Clerk hands X-ray plates to Mr. Estabrook.)

Q. I would like you to examine the prints showing Larsen's left wrist as taken by Dr. Tandet, and do you see the scaphoid bone in those prints? A. Yes, sir.

Q. Do you notice any abnormality in that bone? A. No, sir, I see no abnormality.

Q. Do you see a sign of fracture? A. No, sir, no sign of fracture.

Q. Do you see a small notch in the outside edge of that bone? A. Yes, sir.

Q. What do you consider is the significance of that notch? A. That is the normal shadow of a scaphoid bone as we regularly see it.

197 Q. Doctor, on reading that X-ray plate do you notice any signs of decalcification? A. No, sir. No, those bones are normally calcified. They have the normal amount of calcium in them.

Q. Now, some of the bones cast a whiter or firmer shadow than other bones, do they not? A. Yes, sir. It depends upon the density of the bone and the position of the bone. These bones up here might be classed as decalcified because they are partly out of focus of the X-ray machine.

Q. Doctor, referring to the X-ray prints taken by Dr. Schwartz on the right and left hand—— A. I have shown the right and the left, the oblique view, and here is the right hand, taken straight on, and straight across, the transverse view. That is the normal hand and that is the
198 normal scaphoid bone. It has got the normal notch in it, and the normal amount of calcium in the bone. That is the uninjured hand, the right hand.

Q. Do you find any different amount of calcification in the right hand than is in the left hand? A. No, sir, I do not.

Q. Doctor, referring to the X-ray prints of the feet, will you first take the X-ray print of Larsen's left foot as taken by Dr. Schwartz and— A. Here is a side-to-side view of the left or injured ankle.

Q. And does the cuneiform bone appear in that print? A. It is perfectly uniform.

Q. Where is the cuneiform bone, where does it appear there, doctor? A. Oh, I misunderstood your question.

Q. Is the cuneiform bone there? A. Yes, the cuneiform bone is right here (indicating).

Q. Do you notice any abnormality? A. There is no abnormality, a perfectly normal bone.

Q. Is there any decalcification? A. No, sir, perfectly calcified.

Q. I notice that there is some difference in the density of the bone, doctor. What is the significance of that? A. Well, they are thicker bones. Some of them are thicker 200
than others and they make a more dense shadow. They are not decalcified.

Q. And, doctor, did you arrange to have prints taken of his right foot as well? A. I did.

Q. Will you put them in the box? A. That is an oblique view of the right ankle and that is the anterior-posterior view. I want to show the transverse. This is it (indicating). This is the lateral transverse view of the right or uninjured ankle (indicating), and it shows an identical picture with the one on the left.

Q. Is there any difference in the degree of calcification—A. No, sir.

Q. —which appears there? A. No, sir, not a bit.

Q. Would you examine, please, Dr. Tandet's print of the 201
left foot? A. This I believe is Dr. Tandet's film of the left foot.

Q. Is that film turned around the wrong way, doctor? A. Well, it is immaterial.

Q. Oh, I see. And does the cuneiform bone appear in that print? A. Yes, sir, this is the cuneiform bone (indicating).

Q. And do you notice any abnormality in that bone? A. There is no abnormality whatever, no, sir.

202 *Charles E. Farr—For Defendant—Direct.*

Q. I notice, doctor, that there is a difference in the intensity of the shadow of the different bones, particularly the bones showing the outer phalanx of the toes which do not cast the same shadow. A. No, they are thicker and smaller than the other bones and the X-ray goes through and makes a deeper shadow.

Q. Is there any evidence of decalcification? A. No, sir.

Q. Now, doctor, I would like you to examine the X-ray print of Mr. Larsen's skull. A. This is a front and back view of the skull (indicating). It shows nothing abnormal. It is a perfectly normal skull.

This is a side view of the skull (indicating).

203 Q. Yes. Now, Dr. Tandet spoke of certain variations in the shadow. A. This is another side view (indicating).

Q. Do you notice some variations in the shadow of the skull? A. Yes, sir.

Q. What is the significance of those variations? A. These are the markings of the blood vessels that supply the meninges, or covering of the brain, and also supply the bones of the skull. They are perfectly normal markings.

Q. Doctor, you made a report of your examination and forwarded it to me, did you not? A. Yes, sir.

Q. Doctor, your final conclusion was that Mr. Larsen was suffering, I believe you said, 10 percent disability? A. 10 percent of his left wrist and 10 percent of his left foot.

204 Q. And you noted no disability as to his head, or brain, or nervous system? A. No, sir, none whatever.

Q. What constituted the factors that led to the 10 percent disability that you found? A. I took into account the fact that he had a severe fall; that he had been in the hospitals for quite a long period; that he had been immobilized in plaster, which causes shrinking and atrophy of muscles, and that he had been out of work for four months.

I took into account the fact that he had a slight thickening of the left wrist to the eye but none to measurement; that

he complained of slight rheumatic pain in damp and cold weather, and of the ankle there was a slight—there was a little measurable thickening of the foot, a slight shrinking or atrophy of the left leg about a half inch in each case, which is not an abnormal finding, but considering the fact that he had had this fall and had been in plaster, I allowed him 10 percent disability of the wrist and of the foot.

Mr. Estabrook: No further questions.

Cross-examination by Mr. Cantor.

Q. Doctor, will you please resume the stand? A. Yes, sir. 206

Q. Now, Dr. Farr, over a period of many, many years you have made many, many examinations in a general way, I mean, for shipowners, haven't you? A. Yes, sir.

Q. Would you say that those examinations totaled hundreds and hundreds? A. Yes, sir.

Q. And you have testified on numerous, very numerous occasions for shipowners and their agents in court with regard to those cases, haven't you, doctor? A. Not very many times. Over the years, all the years, yes.

Q. Now, doctor, I want to get something clear and I am going to go over the ground here. You have taken some X-ray plates made by Dr. Irving Schwartz and you have put them in the shadowbox, looked at them, and you told the jury that you see no evidence of fracture: is that right, doctor? A. That is what I said, yes, sir. 207

Q. Now, do you wish to suggest to this jury that this man did not fracture the bones of his left wrist? A. That is my belief. That is my firm belief from a study of the man and of the X-rays.

Q. That he never had a fracture at all? A. No, sir.

Q. And you also wish to suggest to this jury at this time that he never had a fracture of the bones of his left foot? A. Yes, sir.

Q. You say that is your honest belief at this time? A. Yes, sir.

Q. Doctor, do you recall having made a report of this examination to your lawyers? A. Yes, sir.

Q. As a matter of fact, you have just stated in response to Mr. Estabrook's question that you did send such a report? A. Yes, sir.

Q. Doctor, do you recall having said in your report as follows: "I believe, however, he has had a fracture of the scaphoid bone of the left wrist and of one or more of the cuneiform bones of the left foot"? A. Yes, sir.

Q. You did say that? A. Yes, sir.

209 Q. You said that when you made this report? A. Yes, sir.

Q. But you now say you don't believe he had a fracture? A. I do.

Q. What is that? A. I do. I say I believe he did not have a fracture.

Q. In spite of the fact that you have committed yourself in writing to your own lawyers on a previous occasion? A. Yes, sir.

Q. And this report was made in February of 1950? A. Yes, sir.

Q. And you knew the man came to you four years after the accident? A. Yes.

Q. More or less? A. Yes.

210 Q. And you would expect in that time that various acute symptoms would clear up, such as the abnormal swelling that you get with fractures, and also the very definite fracture lines in the plates? You knew that at that time, didn't you, doctor? A. They do and they don't. It all depends on the circumstances.

Q. But you had all that in front of you in February, 1950? A. Yes, sir.

Q. And you had Dr. Schwartz's X-ray plates, didn't you? A. No, I did not.

Q. Do you mean to say, doctor, that you made a report to your lawyers in a case involving fractures of bones without having in front of you X-ray reports of somebody? A. I do. I made that report on my clinical findings and I then corrected it on the X-ray findings.

Q. Did you send a subsequent report? A. No, I made a correction on—I made a statement on the X-ray report.

Q. Which X-ray report? A. The one of Dr. Schwartz, which I already okayed, or which I read and okayed.

Q. Well, what about your report, doctor? A. My report was that I thought there had been a fracture. That is from clinical findings.

Q. Have you made any other report but that? A. The 212
finding of and the okaying of Dr. Schwartz's report.

Q. Did you ever state or did you ever write a report to your lawyers and state, "I made a mistake and on the basis of further evidence which came to me I now tell you I made a mistake"? A. No, sir.

Q. You never did? A. No, sir.

Q. Didn't you know, doctor, or just a minute, I will put it this way, doctor: You are familiar with the customs of our court here, aren't you? A. Yes, sir.

Q. You have been through these cases again and again, haven't you? A. Right.

Q. And you knew that this report was going to be handed to me by the attorney for the plaintiff, didn't you? A. Well, I would expect it. I did not know it.

Q. Of course you knew that, didn't you? A. No, I did 213
not know it.

Q. You have been through this again and again and again, doctor? A. I don't know whether they give you my reports or not.

Q. You don't know that? A. No, sir.

Q. Didn't you know that your report would be handed up as part of the pretrial material in connection with this case? A. No, sir.

Q. And you never made any correction of that original report? A. I did.

Q. What is that? A. I got the X-ray report.

Q. Doctor, isn't it very, very possible for an X-ray to be taken even as little as two or three months later to show no evidence of a fracture? A. It can be so and it cannot, yes, sir.

Q. Now, let us go over the groundwork of this a little bit, doctor. A. Yes.

Q. You are an eminent bone man and when a man gets a fracture of a bone there is separation of the fragments, is that correct? A. Not necessarily, but there is a diminu-
215 tion of continuity, as we call it, a crack.

Q. There is a break somewhere, is there? A. There is a break somewhere or a crack.

Q. And sometimes there is a complete separation and other times there is not, but there is a fracture? A. Yes.

Q. And when that break occurs the natural process of human nature is to pour into that void callus material? A. Yes.

Q. And that callus material fills in all that break whether it is complete or partial, is that not correct? A. Now, I did not get that.

Mr. Cantor: Read it back to the worthy doctor.
(Question read.)

216 A. You mean the break is complete or the filling in is complete?

Q. Yes, the callus fills it in, the callus fills in the break. A. The filling in may be complete or the fracture may be complete or not, either one.

Q. But nature sends in the material into that break, does it? A. Usually, yes.

Q. Usually that is the normal process? A. Yes, sir.

Q. And that material is called callus formation, isn't it? A. Yes, sir.

Q. Now, in time that callus formation fills in that opening, doesn't it? A. Yes, sir.

Q. That callus is a cement, is that right, doctor? A. That is a good word for it.

Q. Yes. I suppose so. I am no doctor, but I am trying to use words that we will all understand.

Q. Now, that cement, after a while, is absorbed by the bone, isn't it? A. That isn't the proper expression, but that explains it.

Q. Yes. It adheres to the surrounding bones and in time it becomes bone itself, doesn't it, doctor? A. Yes.

Q. And it becomes bone so much so that later on when an X-ray is taken in many cases you would not even see 218
any evidence of a fracture? A. That is pretty speculative. I think you can always pick up some evidence.

Q. You think so? A. Oh, I think so.

Q. Isn't it a fact, doctor, that in most cases of a simple fracture of this kind that the evidence of the fracture is completely obliterated? A. It is in children.

Q. What's that? A. It is in children, but rarely in an adult where you have got a real fracture that doesn't show up for many years.

Q. Doctor, isn't it a fact that after four years' time you would expect a fracture of a kind that you found in Larsen, a young, healthy man, going to sea, to be completely obliterated with possible small— A. I would have to correct you on that. I didn't find any fracture.

Q. Wouldn't it be likely that you wouldn't find any defi- 219
nite gross signs of fracture? A. Well, we would find X-ray signs almost invariably.

Q. Almost invariably? A. Yes, sir.

Q. Now, you say that you changed your opinion once you found Dr. Schwartz's findings; is that right? A. That's right.

Q. And you also tell this jury that you made a report based upon incomplete findings; is that right? A. Well, that is a little rough, I think.

Q. You just told the jury that—you just said that you would expect to find some X-ray findings at almost any time? Didn't you just tell that to the jury? A. Yes, sir.

Q. And yet you made your report without X-ray findings, didn't you? A. I did.

Q. So therefore you made your report on the basis of incomplete factual material, didn't you? A. No, sir, I don't think that is fair.

Q. You don't think that that is fair? A. No.

Q. All right. You tell us why you don't think that that is fair. A. Because——

221 Mr. Estabrook: Well, I object to that question.

The Court: Objection overruled.

Mr. Cantor: I am merely trying a lawsuit here for a client. I don't want to be unfair to the doctor. I am asking him to tell us why it is unfair.

The Court: The objection is overruled.

A. (Continuing) I made my clinical examination and my clinical report. The X-rays don't come to me immediately. I don't see them for two or three days.

Q. What's that? A. I don't see the X-ray report for two or three days. When the X-ray report came in, I examined the X-rays. I found there were no fractures. It didn't change my opinion, the fact that he had been injured as to his wrist and foot. But I couldn't find any
222 signs of fracture.

Mr. Cantor: May I call for the original report of Dr. Schwartz?

(Clerk hands report referred to to Mr. Cantor.)

Q. Now, you say when you put down "Okay" on that, that that was tantamount, in your opinion, to a brand new report on this case? A. I don't think it is a brand new report, but it is a correction.

Q. In other words, you are telling us here today that your flat, easily understandable, unequivocal statement in your first report is to the effect that you believe that he had a fracture of the wrist, a fracture of the foot, and that was corrected by a notation on the bottom of somebody else's report saying "Okay." Is that what you are trying to tell this jury? A. That is what I am telling, and I am telling the truth.

Q. All right. I just want to get it clear.

Q. Now, when do you say you got Dr. Schwartz's report? A. I couldn't tell you without seeing it.

Q. You said before two or three days before, didn't you? A. Two or three days later, yes. 224

Q. Now, isn't it a fact that Dr. Schwartz's report bears the very same date that your report bears? A. He got the case and probably or possibly made his report. I don't know. I don't get it, you see.

Q. He made his reply, as a matter of evidence, and I will ask you to look at it and tell us the date on Dr. Schwartz's report (handing)? A. February 10, the same date that I made my examination.

Q. That's right. And what is the date of your report? A. February 10th.

Q. That's right. So you made your report on the same day that he made his report? A. The same day that he made the examination, yes.

Q. Yes. And the same day that he made his report? A. That doesn't mean that I saw this on February 10th. 225

Q. In other words, you predated your report? A. I didn't predate my report.

Q. Now listen, doctor— A. I made my report on February 10th, the day of my examination. I gave my clinical findings the day of my examination. When I got the X-ray report, in a day or two, and I can't tell you exactly when, then I corrected it.

Q. He made an examination of this man the very same day that you did, didn't he? A. It says so, and I believe it.

Q. And without looking at his X-ray report you made your report? A. I did, yes.

Q. Doctor, you have done a lot of discussing here about the fact that there was no decalcification in this man's bones that you could see, and this man had some decalcification in his bones about a month or so after the X-rays, after the accident, and if that was so, would that decalcification be likely to pass away over a period of years or would it remain? A. It would pass away if he used his foot and his wrist.

227 Q. But, on the other hand, was there a strong likelihood that it might remain? A. No, not if he used his wrist and his foot.

Q. Are you aware of the fact that there is some evidence in this case, not of the doctor, not of Dr. Tandet's, but of a completely disinterested agency, that there was decalcification of this man's bones of the wrist and of the foot about a month after the accident happened? A. I believe I read that in the hospital record.

Q. May I read these reports to you, doctor:

(Reading) The left foot shows a moderate decalcification—and that is exactly the term that Dr. Tandet uses. He said "some decalcification." Is that right? A. (No response.)

Q. And this says that there was moderate decalcification
228 of all the bones of the left foot probably due to disuse atrophy; you read that, you say? A. Yes, sir.

Q. Would you disagree with their findings? A. I couldn't. I don't know what was present at that time. I didn't see him at that time.

Q. Do you also read the report saying, "Left arm shows slight calcification of all the bones of the wrist," but they meant decalcification, didn't they? A. I read that, I think, yes, sir.

Q. Probably due to disuse atrophy? A. Yes, sir.

Q. So they found decalcification of the wrist and they found decalcification of the foot? A. Yes, sir. They always find it when they are put in casts.

Q. You say these X-rays taken at this later date don't show it? A. That is true; yes, sir.

Q. Are you also familiar with the report made in this case by the Anglo-American Community Hospital in Havana, Cuba? A. I have read it; yes, sir.

Q. Do you know the reputation of that hospital? A. No, I know nothing about it.

Q. You know X-rays were taken there, don't you? A. I believe it is in the report; yes, sir. 230

Q. And you know that they stated unequivocally that the man had fractures of the wrist and fractures of the foot? A. I believe they did; yes, sir.

Q. And you know that they completely covered his left arm from his fingers to his elbow and his foot from his toes to his knees; is that right? A. Yes, sir.

Q. That is the treatment for a fracture, isn't it? A. Yes, sir.

Q. And the purpose of it is to promote the formation of this callus material that I was talking about? A. It is to prevent displacement.

Q. Now, doctor, you are suggesting that this hospital was completely wrong in its diagnosis of fracture of both these members? A. I think they were wrong; yes, sir.

Q. You think they were wrong? A. Yes, sir. 231

Q. That they slapped these casts on his foot for no reason at all? A. I wouldn't say that. The man came in, and he obviously had been injured, and he had a swollen foot, and he had a swollen wrist, and their X-rays, they thought, showed a fracture, and they put the casts on him. It is a very common mistake.

Q. I see. A very common mistake. And this man received further treatment in the Marine Hospital for about

a month also under the same mistaken misapprehension, didn't he? A. I don't think they made that same mistake, sir.

Q. Now, the man received a four months' disability as the result of these injuries; is that right? A. So he told me, and I believe it.

Q. Well, you know, the record shows about four months? A. (No response.)

Q. Do you mean to tell us that this four-months' disability was caused by just some kind of a surface contusion or blow and not a fracture of the bones? A. I don't say that.

233 Q. What do you say? A. I say that he had an injury, and I can't say what. Probably it was a sprain. Then he was put in plaster and kept quiet, and he couldn't use it.

Now, if you take any one of us and put us in plaster, and keep us there for four or six weeks, we would have some bone atrophy or decalcification.

Q. Did he have a sprain? A. Yes.

Q. Of what? A. Of the wrist.

Q. A sprain of the foot, too? A. Yes, sir.

Q. And sprains of both of them? A. Yes, sir.

Q. Fractures in neither one of them? A. I didn't hear that.

Q. He didn't have fracture in either one, did he? A. Not to my knowledge; no, sir.

234 Mr. Cantor: All right. That's all.

Redirect examination by Mr. Estabrook.

Q. Doctor, did you read the clinical record or the radiographic report dated November 27, 1946 of the left foot from the plaintiff's Exhibit 2? A. I believe I did.

Q. Do you recall this phrase: "No distinct fracture line observed in any of bones. If there was a fracture it healed

completely so that it can no longer be identified"? A. I read that; yes, sir.

Q. And did you consider that in stating your opinion that there was no fracture? A. I did.

Q. Now, doctor, would the moderate decalcification on November 27th, approximately seven weeks after the injury, be expected from having the left foot placed in a plaster cast? A. Yes, sir.

Q. And in your opinion is that decalcification a permanent condition? A. No, sir.

Q. How long is it to be expected, in your opinion? A. It varies a great deal depending upon whether the man can and does use his extremities. 236

Q. In any event, did you find any moderate decalcification on examining the X-rays taken in 1950? A. I did not.

Q. And was your examination of the X-rays of the right foot as well as the left of assistance to you? A. It was. It gave me a comparison between the two sides.

Q. Now, doctor, did you see a clinical record, radiographic report, of the United States Public Health Service, Plaintiff's Exhibit 2, dated December 2, 1946, covering an X-ray of the left arm? A. I did.

Q. And here, as in the X-ray of the left foot, the clinical impression was an old fracture; do you recall that? A. Yes, sir.

Q. Do you recall the X-ray findings? A. I believe the X-ray findings were negative for fracture.

Q. I call your attention to the statement, "The scaphoid 237 shows a double dense linear shadow in the middle of the waist probably due to rings, but no distinct fracture line observed." Do you recall that? A. Yes, sir.

Q. And did you consider that statement by the American Hospital, the Government roentgenologist, in reaching your conclusion that there was no fracture? A. I did.

Q. Now, doctor, do you recall also this report by the impartial Government roentgenologist: "Left arm shows

slight calcification. All the bones of the wrist probably due to disuse atrophy"? A. I remember that, yes, sir.

Q. Was that, in your opinion, a normal result to be expected from having the arm placed in a cast? A. I think they mean decalcification, and then it is the normal thing.

Q. Yes. And is that a permanent condition, in your opinion? A. No, sir.

Q. In any event, did that condition exist in 1950? A. Could it exist?

Q. No, did it. A. No, sir.

Q. And do you base that opinion on the X-rays taken by Dr. Schwartz? A. I do.

239 Q. In both the right and the left arm? A. Yes, sir.

Mr. Estabrook: No further questions.

Mr. Cantor: At this time, your Honor, I offer in evidence the report to Messrs. Haight, Deming, Gardner, Poor & Havens, the attorneys for this defendant, dated February 10, 1950, purporting to be signed by one Charles E. Farr.

Mr. Estabrook: No objection.

(Marked Plaintiff's Exhibit 5.)

Mr. Cantor: No further cross-examination.

Mr. Estabrook: No further questions.

(Witness excused.)

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IRVING SCHWARTZ, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Estabrook.

Q. Dr. Schwartz, are you a physician duly licensed to practice under the laws of the State of New York? A. Yes.

Q. What are your qualifications, doctor? A. I am a roentgenologist, X-ray physician, certified by the American Board of Radiology and diagnostic X-ray. At present I am an instructor in roentgenology at Cornell University Medical School, and assistant professor of clinical roentgenology at the New York University Medical School. I 242
am director of roentgenology at the Knickerbocker Hospital and at the Willard Parker Hospital.

I am assistant roentgenologist at the New York Hospital and at the University Hospital.

I am associate roentgenologist at St. Vincent's Hospital.

Q. Did you make an X-ray examination of Mr. Evald Larsen at the request of my firm? A. Yes.

Q. And we requested that through Dr. Farr, did we not? A. That is right.

Q. And you sent a report to Dr. Farr to be forwarded to us? A. Right.

Q. I ask you to examine Defendant's Exhibit B for Identification, and see if those consist of X-ray plates made by you in the course of your X-ray examination of Mr. Larsen? A. Yes, these are the X-rays. 243

Mr. Estabrook: I offer Defendant's Exhibit B for Identification in evidence.

Mr. Cantor: No objection, your Honor.

(Defendant's Exhibit B for Identification received in evidence.)

Q. Now, Dr. Schwartz, starting with the left wrist, will you examine the X-ray plates you made of Mr. Larsen's left wrist by putting it in the shadowbox, please. A. (Witness does as requested.)

Q. Does the scaphoid bone appear in those prints? A. Yes.

Q. Will you point it out to the jury, please? A. It shows to best advantage in this radiograph. This is the scaphoid bone (indicating).

Q. Do you notice any abnormality of the bone? A. No.

Q. Is there a notch in the bone? A. Yes, there is a notch in the bone. Yes, the word "notch" would be a correct
245 description of this contour of this irregularity in the contour.

Q. In your opinion, doctor, is that notch evidence of a completely healed fracture? A. No. That is a normal part of the bone.

Q. Now, would you also, doctor, place on the screen so that the jury can see it, a print of the right wrist? A. There is a corresponding projection on the right side. I will put it in closer proximity to it, and there is a similar notch on the right side there (indicating). Would you want me to pass this to the jurors? I think they can see it better. It is a small irregularity and I think they can see it if they will hold it against the light. I think that is what the doctor was talking about before.

Q. Now, doctor, before you pass those to the jury, are
246 you able to tell me what degree of decalcification is shown? A. Yes. The decalcification of these bones is normal.

Q. And what is the difference in intensity of the shadow due to, doctor? A. The difference in intensity is due to the different structure of the different bones and of the different parts of the same bone.

Q. Doctor, referring to Dr. Tandet's plate of the left wrist, that is, Plaintiff's Exhibit 4— A. I don't have that here.

Mr. Estabrook: Will you let me have Dr. Tandet's X-ray plates.

Mr. Cantor: Yes (handing).

Q. Do you observe the cuneiform bone? A. No, this is the wrist. The cuneiform bone is in the foot.

Q. The scaphoid bone, that is right? A. Yes, this is the scaphoid bone.

Q. And you said it was shaped somewhat like a peanut did you? A. I did not think of any beautiful figures like that but I think peanut is a good description.

Q. But it is a small irregular shaped bone, is it not? A. Yes, and this gives you a pretty good idea of what it looks like. 248

Q. Do you see any evidence of fracture there? A. I do not.

Q. Do you see a notch? A. Yes, there is an arrow inked in, pointing out this notch. It also appears in the radiograph that I made of the left wrist, and also in the radiograph I made of the right wrist.

Q. Very well. Do you see any evidence of decalcification? A. No.

Q. In those pictures? A. No. I see no evidence of decalcification.

Q. Doctor, did you in preparing your report and your opinion consider other reports, or did you give a report and give your opinion on the prints you made in 1950? A. No; at the time I made my report I had no other information 249 about other X-rays. I did this morning before lunch see some reports that had previously been made.

Q. But your report as of February 10, 1950, was based on your own observations and nothing else? A. Yes, based on the study of the X-rays that I made.

Q. Doctor, when you made a report, or when you made your report dated February 10, 1950, is that the date you mailed the report? A. I have no recollection of when I

250 *Irving Schwartz—For Defendant—Direct.*

mailed the report but the date on the report also corresponds to the date on which the X-rays were made. Sometimes I defer making the report and sometimes when I do make the report there is some delay in mailing, but I have no precise recollection of what happened in this instance.

Q. Doctor, would you look at the prints of the left foot, please, first your prints.

The Clerk: You mean Exhibit 4, Plaintiff's Exhibit 4?

Mr. Estabrook: No. Defendant's Exhibit B.

251 A. Here is a radiograph of the left foot and here is a second radiograph of the left foot.

Q. Now, does the cuneiform bone appear? There are three cuneiform bones, and I was thinking of the cuneiform bone at the base of the big toe. A. Sir?

Q. The cuneiform bone appears there, the cuneiform bone at the base of the big toe. A. Well, let us call this the first cuneiform bone, and we see that here, and we see it again here (indicating).

Q. Now, does that print indicate any significance or any abnormality at all in the bone? A. I see no abnormality.

Q. Do you see any notch in the bone? A. Well, of course, these bones are extremely irregular and you see evidences of the irregularity in outline here. That is the form of
252 them.

Q. And you have a print of the right foot? A. Yes, and I will place those here as they were in corresponding projection.

Q. Yes. A. Side to side.

Q. Well, one is to the left, one to the right and one is the other way around, is that right? A. Well, just as we see here.

Q. Yes. A. The great toes are near each other.

Q. The great toes are in the middle? A. That is right.

Q. Well, isn't there a notch on the right foot of the first cuneiform bone? A. You mean this indentation here (indicating)?

Q. That is the left, isn't it? A. No, this is the right. Would you like it to go the other way? What is your question now, please?

Q. The right foot is to the right? A. Yes.

Q. Now I say there is a notch which appears to be on the right foot as well as the left foot? A. There is an indentation in this aspect of the bone here (indicating).

Q. Yes. A. And it is similar to the indentation here 254
(indicating).

Q. Does that indentation in your opinion indicate a completely healed fracture? A. No, that is the normal contour of that bone.

Q. And looking at those two prints, doctor, do you see any sign of decalcification of the left foot? A. No.

Q. Doctor, you also took radiographs of the ankle, did you not? A. Yes, I did.

Q. And they were negative, were they? A. Yes.

Q. I will ask you, doctor, to examine Dr. Tandet's prints of the left foot, please. A. This is the radiograph of the foot.

Q. And I believe on the left you see an indentation of the first cuneiform bone? A. Yes. He shows only the left here. 255

Q. Yes. A. Both of these are different projections of the left.

Q. But the print to my left, on that print that indentation appears? A. Oh, yes.

Q. And do you consider that indentation, that aspect, to be a sign of a completely healed fracture? A. No, I do not.

Q. Doctor, do you see any sign of decalcification? A. No.

Q. To what do you attribute the lighter shadow of the toes? A. It is normal.

Q. Yes, doctor? A. There is less calcium there than in these other bones. The quantity is different.

Q. Is that an abnormal condition, doctor? A. No, that is normal.

Q. Now, doctor, will you examine the plates of the skull taken by Dr. Tandet? A. Yes.

Q. By the way, doctor, was any request made of you to take X-rays of the skull? A. No.

Q. Doctor, what do those plates show? A. To me they show no abnormality. I see no abnormality in these radio-

257 graphs.

Q. Do you see some evidence of blood vessels in those plates? A. Yes, they are what is known as vascular markings.

Q. But do those vascular markings have any significance? A. Yes. They show where the blood vessels are.

Q. Are they large or small, or are they abnormal? A. Well, there is a considerable range—a considerable normal range of the diameter of these markings, and those markings that we see here are well within that normal range.

Q. Doctor, on the basis of your examination of February 10, 1950, did you see any sign of previous fracture of the scaphoid bone of the left wrist, or the cuneiform bone of the left foot? A. No, I see no such evidence.

258 Mr. Estabrook: Your witness.

Cross-examination by Mr. Cantor.

Q. I suggest you resume your seat, doctor? A. Yes.

Q. Doctor, you were in court yesterday, weren't you? A. I was in the corridor.

Q. Yes. When did you get here? A. Sir?

Q. What time of the day did you get here? A. I guess about ten-forty.

Q. Ten what? A. Ten-forty.

Q. In the morning? A. That is right.

Q. How many hours did you stay here? A. Oh, I think less than an hour, I think.

Q. And did you come back again in the afternoon? A. No.

Q. You were here in the morning, weren't you? A. Yes, I was.

Q. The first thing in the morning? A. No, about ten-thirty or ten-forty, something like that.

Q. You have been here all through the course of this trial, haven't you, doctor? A. Well, I arrived here I guess about 11:15 and I have been here continuously. 260

Q. You heard all of Dr. Farr's testimony? A. Oh, yes, I did.

Q. Now, doctor, have you any idea of——

Mr. Cantor: I withdraw that.

Q. I show you here a copy of the report that you are alleged to have made. Will you look at it (handing)? A. Yes, sir.

Q. That is your report, isn't it, doctor? A. That is right.

Q. And the report is addressed to whom? A. Dr. Farr.

Q. To Dr. Farr? A. Yes.

Q. Now, I want you to turn it sideways. A. Sideways?

Q. Yes, sideways. A. Yes.

Q. Do you notice the stamp on it? A. Yes. 261

Q. Now, what does that stamp say? A. "Received February 14, 9 A. M."

Q. By whom? A. 1950.

Q. By whom? What else? A. To Haight, Deming, Gardner, Poor and Havens.

Q. Do you have any idea how that got into Haight, Deming's hands? A. Yes, I think we mailed that copy from our office.

Q. Who is "we"? A. I think my secretary mailed it.

Q. Where is the original of the report?

Mr. Cantor: Where is the original of the doctor's report?

Mr. Estabrook: Here (handing to Mr. Cantor).

Q. Will you take a look at your original report, doctor (handing to witness)? A. Yes.

Q. Is there any such stamp in that? A. No.

Q. Now, you think your office mailed that to Haight, Deming? A. Yes, that is the usual procedure.

Q. But you have no recollection of that, have you? A. 263 Oh, no.

Q. But these reports were addressed to Dr. Farr— A. That is right.

Q. —weren't they? A. Yes.

Q. You were not retained by Haight, Deming in this matter, were you, to make these X-ray examinations? A. Well, I don't know how to accurately express my relationship. Dr. Farr saw this patient. I knew that the patient had been referred to him by some other agency, and I made the X-ray examination according to the directions.

Q. At his request, didn't you? A. Yes, sir.

Q. And you sent your report to him, didn't you? A. I sent a copy to Dr.—I sent a report to Dr. Farr and a copy to Haight, Deming, et cetera.

264 Q. You have no recollection of having sent a copy to Haight, Deming? A. I have no recollection in this particular case, but that is our routine procedure with cases that come from Haight, Deming's office.

Mr. Cantor: Now, at this time I wish to offer an additional exhibit, the original report made by Dr. Farr.

The one I offered before, your Honor, was a copy which was furnished to us and this is the original.

Is there any objection?

Mr. Estabrook: No.

(Marked Plaintiff's Exhibit 6.)

Mr. Cantor: That is all, doctor, No further cross-examination.

(Witness excused.)

The Court: We will take a short recess.

Mr. Cantor: May I have one minute to read something from this?

The Court: Certainly.

Mr. Cantor: Now, ladies and gentlemen of the jury, may I read this with the Court's permission, your Honor? 266

The Court: Yes.

Mr. Cantor: This is the original report made by Dr. Farr and this report is addressed to Haight, Deming, Gardner, Poor & Havens.

This report bears a stamp on the side received Haight, Griffin, Deming & Gardner, 1950, February 15, A. M. 9.04.

And I have also offered in evidence a report signed by Dr. Schwartz addressed to Dr. Farr which shows that a copy of this was received on February 14, 1950.

The Court: We will take a short recess.

(Short recess.)

Mr. Estabrook: At this time I offer a stipulation dated November 15, 1951 with regard to the Danish law, so ordered November 26, 1951. 267

Mr. Cantor: No objection, your Honor.

The Court: Received in evidence.

(Marked Defendant's Exhibit C.)

(The following proceedings were had in the absence of the jury.)

Mr. Estabrook: Your Honor, at this time I would like to place first a stipulation on the record that Larsen was paid, in addition to his earned wages, the sum of $20.70 representing seven days' wages in accordance with the articles and the Danish law.

Mr. Cantor: I object to the phrase "in accordance with the articles and the Danish law."

I will stipulate to the fact that he received that sum of money.

Mr. Estabrook: And that he also received——

269 The Court: Strike out "in accordance with the articles and the Danish law"; is that what you want?

Mr. Cantor: That's right, your Honor.

Mr. Estabrook: —and that he also received the sum of $79.80 as maintenance and subsistence from December 10, 1946, the date he was discharged from Ellis Island, from the hospital there, until December 30, 1946, at the rate of $3.80 per day, making it $79.80 his maintenance, for a total of $100.50.

Mr. Cantor: We so stipulate. We will concede that this is Mr. Larsen's signature.

The Court: The total is $100.50?

Mr. Estabrook: Yes, your Honor.

On Mr. Cantor's concession, this paper that I have in my
270 left hand bears Mr. Larsen's signature, and on that concession I offer this paper in evidence as a receipt for $20.70.

Mr. Cantor: Now, I object to the admission of that paper in evidence because we have already conceded that he received $20.70, and therefore it is unnecessary, and for the reason that it contains, after translation by a gentleman in the rear of the courtroom, some statements about having been made in accordance with Danish law, and that, to me, sounds very much like a concession as to certain vital points

in this case, and I therefore object to its admission as being——

The Court: If he made the concession as to the vital points in the case, oughtn't it go into evidence?

Mr. Cantor: You mean if he signed it?

The Court: Yes.

Mr. Cantor: But on a question of law I don't think he should be bound by something of that nature.

The Court: That might be, but that would be a matter for you to bring out if you wanted to?

Mr. Cantor: Well, I have made my objection giving my general reasons.

The Court: The objection is overruled. 272

(Marked Defendant's Exhibit D.)

Defendant's Exhibit D.

Undertegnede Matros, Evald Johan Larsen, der den 8. Oktober 1946 blev afmønstret fra S/S "Randa" paa Grund af et Ulykkestilfaelde, anerkender herved fra Rederiet J. Lauritzen at have modtaget $20.70, udgørende den mig i Henhold til Sømandslovens Par. 32 tilkommende Hyre for 7 Dage efter Fratraedelsen.

New York, den 14. Januar 1947.

E. J. LARSEN 273

The Court: May I ask whether the stipulation with respect to the payments is intended to change the stipulation in the pre-trial order? Did you have that in mind?

Mr. Estabrook: Yes, it is. The pre-trial order figure is incorrect, unfortunately. The figure is incorrect.

I would now like to call Captain Lynner as a witness to translate this document.

The Court: It isn't anything that you care to submit to the jury, is it?

Mr. Estabrook: No.

The Court: It is purely for legal purposes?

Mr. Estabrook: That's right, sir.

SIGURD J. LYNNER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination by Mr. Estabrook.

275 Q. Captain Lynner, are you familiar with the Danish language? A. Yes.

Q. I ask you to translate from Danish into English Defendant's Exhibit B. A. (Reading) The undersigned a.b. Evald Johann Larsen, who, on October 8, 1946, was paid off from the SS. Randa on account of an accident agrees that he has received from the owners of the ship J. Lauritzen $20.70, which is due to me according with Maritime law, paragraph 32, that is, wages for seven days from the time I was paid off.

Dated New York, January 14, 1947.

Signed E. J. Larsen.

276 Mr. Estabrook: Now, I am ready to proceed with the jury, your Honor.

(The following proceedings took place in the presence of the jury.)

Q. Captain Lynner, what is your present business and occupation? A. Marine and cargo surveyor.

Q. Captain, have you been a licensed Merchant Marine officer? A. Yes. I have been going to sea for 22 years. I have been surveying for 35 years.

Q. And where did you sail, in the engine room or on deck? A. Deck master.

Q. And you still have a license? A. Yes.

Q. In the American Merchant Marine? A. No, in the Norwegian, a master's license.

Q. Captain Lynner, you heard Mr. Larsen testify as to the replacing of the hatch boards in the No. 1 hatch on the Randa, did you not? A. Yes.

Q. You heard him describe how, when a hatch is covered, first steel beams such as strongbacks are placed in the open 278
hatch? A. Yes.

Q. And these steel beams run across the ship, do they not? A. That's right.

Q. Now, when the steel beams are in place, then hatch boards are put in position from the edges of the hatch out to the beams? A. That's right.

Q. And did you hear Mr. Larsen describe how they started to close No. 1 hatch by covering the port or the lefthand after corner and putting in three boards while standing around the hatch and pushing them into position? A. Yes.

Q. And then did you hear him describe how he and his fellow seaman placed the three other boards up on the hatch, and then he got up on the hatch and picked up 279
the forward end of the boards, one board, and walked sideways over, laying that board in position? A. That's right.

Q. And did you hear him describe how he was holding the board up in front of himself and walking sideways with his fellow seaman holding the other end? A. Yes.

Q. Can you state in your opinion whether that was a proper way to do that work? A. He should have had the board.

Q. Please answer this question yes or no. Is that the proper way to do it? A. No.

Q. What is the proper way to do it, in your opinion? A. He should have the hatch board in front of him walking in towards the middle of the hatch. These hatch boards are two and a half inches thick; they are made by planks, each bolted together, two together, and then the length of which makes them anywheres from 20 to 24 inches wide.

The length of the board depends upon the sections and the length of the hatch, but they are always either 20 inches or 24 inches wide, and always two and a half inches thick.

Q. Do you consider it was proper for him to have stood
281 with his back to the open hatch holding the board up in front of him? A. No. He should have walked athwartships from—that is, from the forward part of the hatch covers that already had been laid down, and he should have walked athwartships, that is, crossways, across the hatch, to where he was going to put the other cover down, and, of course, the hatch is about three feet high, so he would be standing, working on the platform, three feet higher than the man who was on the deck having ahold of the other end of the hatch cover.

Mr. Estabrook: No further questions.

Cross-examination by Mr. Cantor.

282 Q. Captain, what is your business now? A. Marine surveyor.

Q. And you say you have been doing that for 35 years? A. That's right, since 1916.

Q. And is that the only thing that you have been doing for the last 35 years? A. Yes.

Q. You haven't been sailing ships during that 35 years? A. No, but I am on board ships every day, three or four of them.

Q. So that your experience in the handling of ships goes back to 35 years? A. No. I am handling ships, giving advice, and acting as a consultant every day from 9 o'clock in the morning to 5 o'clock at night.

Q. What kind of advice and consulation do you give? A. About the stowage of cargo, about the handling of cargo, about the rigging of ships, about the extent of damages, and about the cost of damages.

Q. Now Captain, these hatch boards, how wide are they? A. They are usually made either from two 10-inch planks or from two 12-inch planks, each bolted together.

Q. They are from 20 to 25 inches wide? A. No, they are from 20 to 24 inches wide. They are never 25 inches unless 284
you put three together and then——

Q. You indicate with your hands, Captain, how wide 20 inches is. A. This is about 24 inches (indicating).

Q. That is 24 inches? A. Yes; and that is about 20 (indicating).

Q. A little wider than that? A. If you will get a measure you will find that it is right.

Q. How thick do you say that board was? A. Two and a half inches thick.

Q. How wide is two and a half inches? A. That is about two and a half inches (indicating).

Q. How long are these hatch boards? A. Depending upon the section and the length of the hatches. You have got hatches anywhere from 20 to 35 feet.

Q. All right. Take an average board, then, and that 285
would be, let's say, 27 feet long and 22 inches wide? A. What do you mean, a hatch 27 feet long? You don't mean that.

Q. How long is a board? Oh, I made a mistake. A. Well, if you have——

Q. About nine feet; is that right? A. If you have, a plank, for instance, 24 feet long, and you have three sections, then the length of the cover will be about eight feet or a

little less, because you have got to make some allowance in order that you can get the covers inlaid on the king beams.

Q. All right, Captain. We understand that. Now, you take a board eight feet long, approximately 22 feet wide, two and a half inches thick; how much would that weigh? A. 22 feet wide?

Q. No. 22 inches wide? A. (No response.)

Q. Did I say 22 feet? A. Yes.

Q. 22 inches. A. I should think that board would weigh somewhere around 35 pounds.

Q. Now, you say that the way to do it is for these men to grasp the edge of this board, the long edge of the board,
287 and walk forward with it? A. No. You have got handles on each side, on each end of each cover, and you have got a staple, a bar on the opposite end—for instance, this is the hatch board. Then you have got a staple here on this side, and you have got another staple here on the other side to get a hold of that board.

Q. Do all hatch boards have staples? A. Practically all of them.

Q. Do you know whether this ship had staples? A. No, I don't.

Q. Would that make a difference in your answer? A. No. You would have to carry it.

Another thing, you don't carry those boards. You slide them, more or less. If you have got a long distance to go, you carry them, but if you have just 24 inches to put it
288 over, you just push it over.

Q. What objection would there be to carrying it, captain? A. Well, it is more work. The other way it is easier and it is safer.

Q. It is easier? A. Yes.

Mr. Canton: No further cross-examination.

Mr. Estabrook: No further questions.

(Witness excused.)

Mr. Estabrook: At this time, your Honor, the defendant rests and moves to dismiss the complaint on the grounds that the Court has no jurisdiction, and that the applicable law, the Danish law, according to that law Larsen received those benefits to which he was entitled, and that no further benefits are properly due him in a Court of law, but rather through the Danish Compensation Board.

The Court: Motion denied.

Mr. Cantor: No rebuttal, your Honor. The plaintiff rests.

The Court: Are you ready to sum up now?

Mr. Cantor: I don't quite understand you, your Honor?

The Court: Are you gentlemen ready to sum up now? 290

Mr. Cantor: If you wish us to, your Honor. If you want us to go over to tomorrow, that is all right with me.

The Court: Well, I think it would be unfair to have one summing up without the other summing up at the same time.

Do you think that you can finish up in 20 minutes? Can you do it in 10 minutes apiece and then I will charge the jury in the morning?

I would like to adjourn today at the usual hour, which is half past four.

Mr. Cantor: I think that ordinarily I am a long summer upper, but I think that I can do it in 10 minutes, your Honor.

Mr. Estabrook: Well, if Mr. Cantor can do it in 10 minutes, so can I.

The Court: All right, proceed, gentlemen. 291

(Mr. Estabrook summed up to the jury on behalf of the defendant.)

(Mr. Cantor summed up to the jury on behalf of the plaintiff.)

The Court: Ladies and gentlemen of the jury, I want to caution you against discussing this case overnight among yourselves and particularly not with anybody else.

292 *Motion to Dismiss.*

You will please be here at half past ten in the morning when I shall deliver my charge.

(At this point the jury left the courtroom and the following proceedings took place in the absence of the jury:)

The Court: Have you gentlemen seen each other's requests to charge, or have they been exchanged?

Mr. Cantor: No, sir.

Mr. Estabrook: No, sir.

The Court: Do you want to run over them now to see if either one has any objections to the other's?

Mr. Cantor: Do you wish us to exchange requests at this time, your Honor?

293 The Court: Well, I want each one of you to look at the other's requests so that you can tell me whether you have any objections.

Mr. Cantor: That is what I had in mind. Here is an extra copy for you (handing to Mr. Estabrook).

Plaintiff's Requests to Charge.

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

294

1st. The relationship between the plaintiff and the defendant was of such a character that they were governed by the provisions of the Jones Act.

2. The defendant was under the obligation to furnish plaintiff with competent fellow crew members.

3. That the negligence of any crew member is the negligence of the defendant.

4. Should the jury find that the plaintiff sustained his injuries as a result of the negligence of the fellow crew member with whom he was working, then the jury must find for the plaintiff on the first cause of action.

5. Should the jury find that the plaintiff performed some act, or failed to perform some act, which contributed to the accident, such finding would not completely bar the plaintiff's right of recovery on the first cause of action. The jury, in such case, should apportion the degree of blame attributable to the plaintiff and the defendant, and deduct from the total damages assessed the percentage of negligence attributable to the defendant, and award a verdict to the plaintiff for the balance. 296

6. The Jones Act provides that assumption of risk is no defense to this type of action. In other words, the fact that plaintiff worked under conditions which involved a risk does not mean that he assumed the consequences of the risk.

7. Plaintiff is not required to prove his case beyond any reasonable doubt under the evidence. If the jury finds that the preponderance of the evidence supports the plaintiff's side of the case on the issues he is to prove, plaintiff is entitled to recover.

8. It is not necessary for the plaintiff to have exercised the best possible judgment in order to be determined free from contributory negligence. His conduct is to be measured only by what was reasonable under the particular circumstances. 297

9. In the event you find that plaintiff is entitled to recover, his recovery should include such a sum as will adequately compensate him for his pain, suffering, loss of earnings, diminution of his earning powers and for the perma-

nence of his injuries. In determining his loss of earnings, you should compute the amount you believe he lost by reason of injury. You should compensate him for wages he lost during said period which he otherwise would have received. In determining the amount plaintiff is entitled to recover for pain and suffering, you should take into consideration the pain he has suffered in the past and the pain he is likely to suffer in the future.

Your award will be the complete and final award for all loss of earnings, pain, suffering and permanence of injuries suffered by the plaintiff in the past, as well as the complete and final award for all such loss of earnings,
299 pain, suffering, and permanence of injuries that you believe he will suffer in the future.

10. Plaintiff is entitled to an award for maintenance and cure on the second cause of actio.. regardless of the issues of negligence, as long as he was injured aboard the vessel and same was not caused by his own wilful fault or vice. Such award for maintenance and cure should be at a reasonable rate per diem for the number of days he was unable to work as a result of the injuries he sustained and during which time he was either taking out-patient treatment or convalescing.

Prospective Requests to Charge.

300

UNITED STATES DISTRICT COURT.

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

1. Plaintiff is making no claim that his earning capacity has been impaired (pre-trial order, paragraph 6(2)).

2. Plaintiff is making no claim for medical expenses (pre-trial order, paragraph 6(5)).

3. If American law applies, defendant is entitled to a credit as to the second cause of action for all moneys advanced plaintiff for his board and lodging.

4. If American law applies, defendant is not an absolute insurer (*Larsson* v. *United States of America*, 1950 A. M. C. 176, affirmed 1950 A. M. C. 769, 181 F. (2d) 6, cert. den. 71 S. Ct. 55, 340 U. S. 833).

5. If American law applies, it is incumbent upon defendant to treat plaintiff as if he were capable of using a modicum of care for his own safety. 302

6. Negligence may not be attributed to defendant shipowner where plaintiff seaman had the means furnished to adequately protect himself from the possible contingency causing the injury (*Larsson* v. *United States of America*, 1950 A. M. C. 176, affirmed 1950 A. M. C. 769, 181 F. (2d) 6, cert. den. 71 S. Ct. 55, 340 U. S. 833).

Defendant reserves the right to prepare additional requests to charge in the event such are required by unexpected testimony.

Dated, New York, N. Y., December 4, 1951. 303

Respectfully submitted,

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant,
80 Broad Street,
New York 4, N. Y.

The Court: Perhaps I can save you gentlemen some time. I do not expect to charge any of these in so many words, but in substance most of them seem to me to be good law which I will charge in substance, but if any of you have any objections as to what the other is requesting me to charge I will be glad to hear that.

Mr. Estabrook: If your Honor please, the one charge that Mr. Cantor and I are at odds about is his suggested charge No. 9. It is my position that there is no claim for loss of future earnings.

The Court: Yes?

Mr. Estabrook: And that is based on the pre-trial order,
305 paragraphs 6 and 2, and for that reason I did not introduce into evidence the plaintiff's subsequent earnings record.

Mr. Cantor: Well, your Honor——

The Court: That is provided for in the pre-trial order.

Mr. Cantor: That is true. There is no question about that, your Honor. We concede readily that there has been no impairment to date of his earning power, but the thought occurs to me that inasmuch as there is a permanent partial disability that is not only claimed by us, but admitted by their own physicians, because they found some degree of permanent partial disability, and we feel that has some bearing on the question of the plaintiff's future earning power which should not be dismissed entirely.

The Court: Well, it might but it happens that the ques-
306 tion of future earning power is out of the case as the result of the pre-trial order.

Mr. Cantor: Well, the wording of the pre-trial order has been impaired, but I do not think that was the intention at that time in view of all the facts here, and in view of the further fact that both parties give him a permanent partial disability, and it would not seem to be fair to exclude that consideration completely from the jury.

The Court: Well, I think that it has been done already. That is my ruling anyway, as that is not before me.

307

Mr. Cantor: Exception.

Of course, I also except to No. 6 of their prospective charges and that reads as follows:

"Negligence may not be attributed to defendant's shipowner where plaintiff seaman had the means furnished to adequately protect himself from the possible contingency causing the injury."

I think that there has been mixed up the issue of contributory negligence and negligence.

The Court: Well, I have some doubt about that, Mr. Estabrook.

Does that case involve a charge, or is that simply a statement from an opinion of the Court?

308

Mr. Estabrook: That is a statement from an opinion, your Honor.

The Court: I shall do my best adequately to explain the principle of negligence and contributory negligence.

Mr. Estabrook: I think Mr. Cantor's objection is well founded.

The Court: So that 5 and 6 I do not expect to charge in so many words. That is just one facet of the law.

Mr. Cantor: Yes.

The Court: Due care, No. 5.

Mr. Cantor: Yes.

Mr. Estabrook: That is from an opinion which has the most persuasive language that I find in it on contributory negligence.

309

Mr. Cantor: That is what happens when you cull sentences from an opinion.

The Court: All right. I think we understand each other.

(Adjourned to December 7, 1951, at 10.30 A. M.)

310

Charge of the Court.

DIMOCK, J.

The Court: Ladies and gentlemen of the jury: It is now my duty to instruct you on the law that is to be applied in this case.

Under our legal system the determination of the law is the exclusive province of the Judge while the determination of the facts is the exclusive province of the jury. Thus you are to determine the facts in this case and apply the law as I state it to you.

The case concerns two claims, or, as the legal phrase goes, causes of action. They are asserted by the plaintiff, Evald Larsen, against the defendant J. Lauritzen. Both
311 of these causes of action arise out of an accident while the plaintiff was employed on the steamship Randa owned by the defendant.

In the first cause of action the plaintiff seeks to recover $12,500 damages for personal injuries sustained in the course of his employment as a seaman. This cause of action is based on negligence on the part of the defendant acting through his officers or seamen on the vessel.

In the second cause of action the plaintiff seeks to recover $2500 for what the law terms maintenance and cure. While both of these actions are grounded upon the same facts, the theory of the law applicable to each differs. This second cause of action for maintenance and cure, which I will briefly hereafter refer to as the second cause
312 of action, does not depend on negligence of the defendant or his employees. Regardless of his responsibility for the injury of the seaman while engaged in the service of the vessel, the owner is nevertheless obligated during the period of the seaman's disabiblity to pay his board and maintenance as an incident to the relationship of employer and employee. However, that is not true with respect to the first cause of action. There the plaintiff can recover against the defendant, or against the employer, only if

there was negligence on the defendant's part, or on the part of his officers or seamen.

The parties and the Court at a pretrial hearing formulated this issue for your determination in the following words:

Was plaintiff injured through any act of negligence of another member of the crew who was handling one end of the hatch board at the time of the accident?

And that is the issue for you to consider in connection with this first cause of action which involves negligence.

Now, to define the term "negligence" for you, a person is negligent when his act or omission to act is not what would be the conduct of a reasonably prudent person in 314 similar circumstances.

It will help you in deciding whether the defendant is negligent to consider the duty or duties placed upon him. The defendant and, therefore, his officers and seamen were under a duty to exercise ordinary care with respect to the plaintiff. That means they must act in such a manner as not to create a risk of injury to the plaintiff which they should have anticipated and guarded against. Just because there are risks incident to the operation of ships, do not make the mistake of thinking that the plaintiff assumed them by following the sea. The fact that the plaintiff worked under conditions which involved risks does not mean that he assumed the consequences of the risks.

In this case you have the testimony of the plaintiff as to 315 how he was injured. You are to decide whether the injury occurred as he said and, if so, whether the Swedish seaman was negligent in any way. In other words, did the Swedish seaman act in such a manner as to create a risk of injury to the plaintiff which the Swedish seaman should have anticipated and guarded against?

You can't regard the mere fact of an accident as the basis for finding the defendant negligent, nor are you to guess or speculate as to whether the defendant was negli-

gent. Your determination must be based upon facts or reasonable inferences. If you find that the defendant has not been negligent your verdict must be for the defendant on the first cause of action which is based on negligence.

The plaintiff must prove by a fair preponderance of the evidence every element of his cause of action. This burden of proof on the plaintiff is determined by your weighing the credible and convincing evidence tending to prove each element against the credible and convincing evidence tending to disprove that element. This is done in your minds just as a chemist would weigh two physical substances on a balancing scale. If the evidence tending to
317 prove either of the plaintiff's causes of action weighs more in your mind than the evidence tending to disprove it, then the plaintiff has sustained his burden of proof on that cause of action and he can recover. If, on the other hand, the balance is equal, or if the evidence tending to disprove one of the plaintiff's causes of action weighs more in your mind, then the plaintiff has failed to sustain his burden of proof on that cause of action, and your verdict will be for the defendant on that cause of action.

In this case the parties and the Court in their pretrial conference and order have formulated a second issue for you to determine besides this issue of negligence:

Did the negligent act of the plaintiff contribute to or help to bring about the accident?

318 That is, did any negligent act that the plaintiff himself did contribute to or bring about his own injury and, if so, to what extent did any negligent act of the plaintiff contribute to his injury?

The defendant claims that the plaintiff was negligent in the way he carried the hatch board and that that in some way contributed to the accident.

I have already given you a definition of negligence but it may be of some help to you if I repeat it here. A person

is negligent when his acts or omission to act are not what would be the conduct of a reasonable and prudent person in similar circumstances.

In deciding whether the plaintiff was negligent you should consider what is expected of him. The plaintiff is expected to exercise ordinary care, which means that he is to act in such a manner as not to create a risk of injury to himself that he should have anticipated and guarded against.

You should not make the mistake that a finding by you that the plaintiff was contributorily negligent would prevent his recovery if the defendant was also negligent and the defendant's negligence was the proximate cause of the 320
injury. In such case the liability is apportioned between the two. When I discuss the question of damages later I will explain to you how that is done.

There is one important difference between the negligence of the defendant and the contributory negligence of the plaintiff. Earlier I pointed out to you that the plaintiff has the burden to show by a fair preponderance of the evidence all of his claims in the first cause of action, and among them, of course, is the defendant's negligence. But it is just the other way around with respect to the plaintiff's contributory negligence. Contributory negligence is the charge made by the defendant and he has the burden of proof to show that the plaintiff's contributory negligence contributed to the accident by a fair preponderance of the 321
evidence.

You should consider all the circumstances of the case. I want to emphasize to you again that you are the sole judges of the facts. My mentioning the facts in the case has been only to illustrate to you the principles of law involved. You are to understand that I have no opinion one way or the other as to the facts.

Two kinds of evidence are presented in most lawsuits: One is called direct evidence and the other is called circumstantial evidence. Direct evidence shows the fact in issue itself without requiring any inference, though, of course, there is always the question of whether the evidence is to be believed. Circumstantial evidence, on the other hand, shows other facts from which the facts in issue can reasonably be inferred, and you are entitled to consider circumstantial evidence to that extent.

In your deliberations you must consider all the evidence tendered by both parties, but you are to disregard evidence which has been stricken from the record. You are
323 also to disregard the objections made by counsel during the trial, and the rulings made on those objections are not to influence you one way or the other.

Statements as to facts made during the trial, or even in the summations by counsel and by me, are only our recollections and you must not be controlled by such statements. I say again you are the sole judges of the facts, and it is your recollection alone that governs.

The determination of a fact turns on the credibility of a witness and other evidence. Whether a witness or other evidence is to be believed depends on many factors. It is the sort of decision you make in the important affairs of your everyday lives. It is a matter of common sense. You can consider the witness' demeanor on the stand, what interest, if any, he has in the outcome of the case,
324 how his story impresses you, how his story fits in with other evidence, and whether it jibes with common experience.

The same general approach applies to expert witnesses as I have just outlined to you for lay witnesses except that most of the matters that the expert testifies to are not within common experience but require expert training and knowledge. However, nevertheless you determine their credibility as you would make a determination in the ordinary affairs of your everyday lives.

Now, the question of damages: With respect to the first cause of action, if, and only if, after considering all the evidence you find that the defendant was negligent, then you will turn to the question of damages. In considering the question of damages I shall assume for the purposes of the discussion only that you have found that the defendant was negligent. The plaintiff claims several kinds of damages under this first cause of action, such as for loss of pay up to date, for his pain and suffering up to date and in the future, and for permanent injury. All these items of damages must be established by the plaintiff by this fair preponderance of the evidence which I have explained to you for him to recover.

326 Taking up his first claim for loss of pay, he is entitled to recover whatever pay he lost as a result of the injury. The elements which you compute his damages for loss of pay upon are these:

He was out of work from October 7, 1946, the date of the injury, until January 27, 1947, when he went back to work. That is about 17½ weeks. He testified that his rate of pay was $20.70 a week and that he averaged $50 a month, which would be about $12.50 a week, in overtime. You can use those factors in arriving at any verdict which you render for the loss of pay which the plaintiff suffered before he went back to work. And, of course, there should be deducted from any result that you arrive at this one week's pay of $20.70 which you have heard was given to him.

327 The other items of damages which he claims are for pain and suffering both in the past and in the future and for his permanent injury. You will recall that his claim for loss of wages is only in the past because he has gone back to work, but the other damages, the pain and suffering that he already suffered and that he is likely to suffer in the future, and the permanent injury which, of course, has no before and after relationship.

In this connection the pretrial order submits to you the issue: What were the plaintiff's injuries? This means, of course, the injuries resulting from the accident, and I need add nothing to the summations of counsel which went into that question.

This item of pain and suffering past and future and damages for permanent injury are difficult to determine since you have no yardstick of any kind except your own common sense and judgment based on experience, but the amount you set, however, must bear a reasonable relationship to the nature and extent of the pain and suffering and the permanency of the injury.

329 I mentioned earlier that if you find that the plaintiff was contributorily negligent and the defendant was also negligent the damages should be apportioned. The apportionment is made by determining the degree to which each one is negligent. Thus you might, for example, decide that the plaintiff and defendant were equally at fault. Thus if the damages were set at $10,000 you would award the plaintiff $5,000, or 50 per cent of the amount of damages. Similarly, if you found that the degree of the defendant's negligence was 60 per cent and the degree of the plaintiff's negligence was 40 per cent, you would award the plaintiff 60 per cent of the damages. The choice of this sum of $10,000 and the various percentages I have given you have no relationship to this case, of course. They are only examples for the purpose of illustration to you.

330 Again I caution you that my discussion of damages on this first cause of action is for your guidance only if you find that the defendant was negligent.

Now we consider a much less important matter and a much simpler matter, the second cause of action which is for maintenance and cure. Our standards for determining the liability, as I mentioned earlier, are wholly different from that with respect to negligence. If the plaintiff was injured while in the service of the vessel, and

that is substantially conceded in this case, then you are to award a recovery for maintenance and cure. The objective of an award for maintenance and cure is to provide the seaman with his subsistence and medical and nursing expenses from the date of the injury until he reaches his maximum possible cure. And, of course, that has no relation at all to the issue of negligence. The mere fact of an injury is the incident that brings this element into play; that is, an injury occurring while the plaintiff was in the service of the vessel and sustained while he was in the employ of the defendant. By "maximum possible cure" is meant the moment when he has made as full a recovery as is reasonably possible and when no further improvement 332
in his condition is reasonably to be expected.

In computing the award you must exclude from your consideration the award up to December 9, 1946, while the plaintiff was in various hospitals as an in-patient at the expense of the defendant. However, you may award maintenance and cure for the period while he was an out-patient; that is, from December 9th to January 9th while he was visiting the hospital but not staying there. Of course, you may not award any maintenance and cure after the time the plaintiff returned to work on January 27, 1947.

The rate for maintenance and cure is $6.00 a day. That is, if you find that the plaintiff was entitled to maintenance and cure for any number of days, then you multiply that 333
number by $6.00 and the result is the award for maintenance and cure on his second claim. Thus the period during which you are to consider the plaintiff's right to maintenance and cure is from December 9th, 1946, to January 27, 1947, or 49 days. But, of course, you are to deduct the amounts already paid by the defendant for the plaintiff's maintenance: that is, the sum of $3.80 a day for the period from December 10, 1946, to December 30, 1946, which is $79.80 according to my computation: the award

for 49 days which would be $294, and with the deduction of $79.80, that would leave the sum of $214.20 as the amount you may award under the second cause of action for maintenance and cure.

As I have told you again and again, there are two causes of action upon which you are to render a verdict. On each cause of action you can render a verdict either for the plaintiff or for the defendant. Thus on the first cause of action based on negligence you can render a verdict for either the plaintiff or the defendant; likewise, on the second cause of action for maintenance and cure you may render a verdict for either the plaintiff or the defendant.

335 If either verdict is for the plaintiff you will, of course, also fix the amount of damages. If you award the plaintiff damages it will be the complete and final award for his damages arising out of this accident.

If you render a verdict for the plaintiff or for the defendant you must be unanimous.

The case is submitted to you with the full confidence that the oath you took at the time you were sworn in as jurors will be fully adhered to. In the course of your deliberations if you require any of the exhibits you can send for them, or if you prefer you may take them with you, and if you want any of the testimony read during your deliberations you may so advise and the reporter will read it to you.

Mr. Cantor: May I make a request to charge at this time, your Honor?

336 The Court: Yes.

Mr. Cantor: I would like your Honor, if you wish, to charge in substance that the plaintiff's version of the facts constituting the accident and the surrounding circumstances in this case have been undisputed, and unless the jury should find that his account of the facts of the accident is inherently incredible, that it must stand as the facts of the case, and particularly so in view of the remarks of the counsel for the defendant that they do not challenge the

plaintiff's version of the manner in which the accident occurred.

The Court: I did not get your last part of that statement.

Mr. Cantor: I say particularly in view of the fact that the defendant's counsel at various times in his address to the jury—I don't know whether it is on the record or not—has stated that the defendant does not challenge the plaintiff's version of the manner in which the accident occurred.

The Court: Do you have any objection to that charge, Mr. Estabrook?

Mr. Estabrook: No, sir, your Honor.

The Court: I so charge. 338

Mr. Cantor: No further requests, your Honor.

Mr. Estabrook: If your Honor please, the defendant respectfully excepts to that portion of the charge stating that the defendant is liable for the negligence of his officers and seamen. The defendant requests the Court to charge that if the jury finds the defendant provided maintenance and cure and paid the man's wages and fulfilled his obligation under the Danish law, they must then find for the defendant.

The Court: That request is denied.

Mr. Estabrook: The defendant also excepts to that portion of the charge setting the rate of maintenance at $6.00 a day.

The defendant requests the Court to charge that the plaintiff is entitled; that is, if they find he is entitled to 339 maintenance, to that sum necessary for his board and lodging while he receiving out-patient treatment and while he is awaiting the maximum benefits to be expected from medical treatment, and that he should receive only the balance of the amount necessary for such board and lodging after deducting the payments already made on account of his maintenance.

The Court: I am not sure if I understand you. Is that request directed to the charge as to the $6.00 a day?

Mr. Estabrook: Yes, sir. We object to the Court fixing the sum of $6.00 a day, in view of the fact that there was no testimony that the amount paid was insufficient for the plaintiff's board and lodging in New York.

The Court: What have you to say to that?

Mr. Cantor: I don't recall at the moment as to whether the matter was covered by the pretrial order, but on the subject of maintenance and cure that has more or less been established as the customary rate, and this amount has more or less become so fixed that it was more or less established to be a matter of custom as between the parties in litigation of this character, more or less a matter of custom
341 accepted both by the defendant and by the plaintiff and by the Court, so that I feel that the Court is well justified in charging the jury that the customary rate of pay for maintenance and cure is $6.00 per diem.

The Court: That was my view of it and I had not expected that there would be any question raised about it, but rather than have any question in view of the fact that there is no testimony on the subject, I will amend my charge to the extent of leaving to the jury the reasonable amount to be paid for maintenance and cure not in excess of $6.00 a day.

Mr. Cantor: If your Honor please, although the inference of your Honor's charge I think is or should be clear, I believe that as a matter of excluding any possible doubt on the subject, that the Court should charge in words or
342 substance that the law of the case that they are to consider is the law that you have charged, and that they should disregard any references whatsoever to Danish law, and that the Danish law has no application to the facts in this case.

The Court: Yes, I so charge. That is a question of law which has been the subject of argument between Court and counsel, and I have determined that the Danish law has no application.

Mr. Estabrook: May I take an exception your Honor?

The Court: Yes.

Mr. Cantor: May I make one more last request, and hat is that as far as the testimony of experts is concerned, he jury may accept such part of the testimony or any or ll of the expert's testimony as they feel coincides or jibes ith their understanding of the facts in the case, and that he same thing applies to all or any part of the testimony f experts which is merely for their guidance and not to onstitute a finding or to be binding on them.

The Court: Yes, that is also so.

(At 11.00 A. M. the jury retired to deliberate.) 344

(At 11.35 A. M. the following proceedings occurred in ourt, out of the presence and hearing of the jury:)

The Court: Will counsel in the Larsen case come forward?

There is a sealed envelope from the jury. They wish to know the date of Mr. Larsen's accident and the date of his return to work aboard ship. Will it be satisfactory to counsel if we give them those dates on this paper and return the paper to them?

Mr. Estabrook: Yes, your Honor.

Mr. Cantor: Yes, sir.

The Court: The accident was October 7, 1946, and the other date is January 27, 1947; isn't that correct?

Mr. Cantor: Yes, sir.

Mr. Estabrook: Yes, sir. 345

(At 2.30 P. M. the jury returned to the courtroom and the following proceedings occurred:)

The Clerk: The jurors will please answer to their names in the order in which they are called.

(Jury roll called.)

The Clerk: Mr. Foreman, have you agreed upon a verdict?

The Foreman: Yes, we have.

The Clerk: How do you find?

346 *Verdict.*
Motion to Set Aside Verdict.
Motion to Dismiss.

The Foreman: We find for the plaintiff.

The Clerk: There are two causes of action: On the first and second cause of action how do you find?

The Foreman: On the first cause of action, for the plaintiff in the sum of $4,052.50, and the second cause of action $215.

The Clerk: Ladies and gentlemen of the jury, listen to your verdict as it stands recorded in the minutes of this trial:

You say you find for the plaintiff in the amount of
347 $4,052.50 on the first cause of action, and $215 on the second cause of action, and so say you all.

The Jurors: Yes.

Mr. Cantor: No motions, your Honor.

The Court: Do you have any motions?

Mr. Estabrook: Yes, your Honor.

At this time the defendant moves to set aside the verdict and for a new trial on the ground that the verdict as to the first cause of action is excessive in amount, contrary to law, contrary to facts, and contrary to the weight of the evidence.

In this particular we point out that Larsen was out of work three and two-thirds months from October 7, 1946, to January 27, 1947. His earnings as testified to were $130 a month, making a total of $476.67. The defendant paid
348 him $20.70, making a net amount of $455.97 actual special damages. All his medical expenses and traveling expenses were paid by the defendant, and defendant submits that the sum of approximately $3,600 for pain and suffering is excessive.

The Court: Your motion is denied.

Mr. Estabrook: Defendant also moves to dismiss the complaint on the ground that this court is without jurisdic-

tion because this is not an action between citizens of the United States but is an action between citizens of Denmark and outside of the jurisdiction of this court. The defendant renews its motion on the ground that the Danish law is properly applicable and not the Jones Act.

The Court: That motion is denied.

Thank you, ladies and gentlemen. Your verdict shows a very careful consideration of the case.

Notice of Taxation.

UNITED STATES DISTRICT COURT. 350

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Sirs:

PLEASE TAKE NOTICE that the within is a copy of the items of the costs and disbursements in the above action, and that the same will be adjusted by the Clerk of the Court at his office in the United States Court House Building, Foley Square, in the Borough of Manhattan, City of New York, on the 21st day of December, 1951, at 11:00 A. M. in the forenoon of that day.

Dated: New York, December 13th, 1951. 351

Yours, etc.,

RICHARD M. CANTOR,
Attorney for Plaintiff,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
City of New York.

352 *Notice of Taxation.*

To:

HAIGHT, DEMING, GARDNER, POOR & HAVENS, Esqs.,
Attorneys for Defendant,
80 Broad Street,
New York 4, N. Y.

Proposed Bill of Costs.

UNITED STATES DISTRICT COURT,

353 SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

Attorney's Docket Fees	$20.00
Notarial Fees	1.50
Subpoena Duces Tecum Fee:	
Marine Hospital, Stapleton, S. I., N. Y.	4.00
Long Island College Hospital	2.00
Defendant	2.00
Clerk's fees	15.00
354 Total taxed at	$44.50

Dated: New York, December 21, 1951.

WILLIAM V. CONNELL,
Clerk.

Entered: 12/21/51.
U. S. D. C.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

I, RICHARD M. CANTOR, being duly sworn, do depose and say:

I am the attorney for the plaintiff herein, that the foregoing disbursements have actually been made and necessarily incurred herein and are reasonable and just.

RICHARD M. CANTOR.

Sworn to before me this
13th day of December, 1951. 356

MAXWELL OPPER
Notary Public in the State of N. Y.
Qualified in New York County
No. 31-8229600
Cert. filed in Kings and New York
Co. Clk's & Reg. Off.
Commission Expires March 30, 1952.

357

358

Judgment.

DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

The issues in the above entitled action having been brought on regularly for trial before the Hon. Edward J. Dimock and a jury, on December 5, 6, and 7, 1951, and the jury having rendered a verdict in favor of the plaintiff, it is

ADJUDGED: That the plaintiff have judgment against
359 the defendant, for the sum of $4,267.00.

Dated, New York, December 21, 1951.

WILLIAM V. CONNELL,
Clerk.

O'G
Dec. 21, 1951.

Plaintiff's costs taxed at $44.50.

WILLIAM V. CONNELL,
Clerk.

Filed: December 21, 1951.
360 Docketed as of December 24, 1951 at 9 A. M.

Stipulation Amending Title.

361

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IVALE JOHANN LARSEN,
Plaintiff,

against

"JOHANNES" LAURITZEN, first name being fictitious, real name being unknown,
Defendant.

362 IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that the title of the above action is amended to read as follows:

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

EVALD JOHANN LARSEN,
Plaintiff,

against

J. LAURITZEN,
Defendant.

Dated: New York, December 13th, 1951.

363

RICHARD M. CANTOR,
Attorney for Plaintiff,

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So Ordered: December 19, 1951.

VINCENT L. LEIBELL,
U. S. D. J.

364 **Defendant's Notice of Appeal.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IVALE JOHANN LARSEN,
Plaintiff,
against
J. LAURITZEN,
Defendant.
Civ. 41-475

PLEASE TAKE NOTICE that J. Lauritzen, the defendant
365 above named hereby appeals to the United States Court of Appeals for the Second Circuit, from the judgment entered in this Court on or about the 21st day of December, 1951, on a jury verdict in favor of the plaintiff and against the defendant in the sum of $4,267.50 with costs taxed thereon in the sum of $44.50, and from each and every part thereof.

Dated, New York, N. Y., January 4, 1952.

Yours, etc.,

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant-Appellant,
80 Broad Street,
New York 4, N. Y.

366 To:

WILLIAM V. CONNELL,
Clerk.

RICHARD M. CANTOR, Esq.,
Attorney for Plaintiff-Appellee,
51 Chambers Street,
New York 7, N. Y.

367

Stipulation Extending Time to File Record on Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto, that defendant's notice of appeal to the United States Court of Appeals for the Second Circuit having been filed on January 4, 1952, the time of the defendant, J. Lauritzen, to file the record on appeal herein with the United States Court of Appeals for the Second Circuit is extended to April 3, 1952, and that an order to this effect may be entered without further notice. 368

Dated: New York, N. Y., February 4th, 1952.

RICHARD M. CANTOR,
Attorney for Plaintiff.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant.

So ordered: 2/6/52.

THOMAS F. MURPHY,
U. S. D. J.

369

370

Stipulation Re Exhibits.

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT.

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

against

J. LAURITZEN,
Defendant-Appellant.

371

IT IS HEREBY STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that Plaintiff's Exhibits 1, 2, 3, 4, 5 and 6 in evidence and Defendant's Exhibit B in evidence shall not be printed in the transcript of record on appeal, but may be referred to and produced and handed to the Court on the argument herein by any party hereto.

Dated: New York, N. Y., March 4th, 1952.

RICHARD M. CANTOR,
Attorney for Plaintiff-Appellee.

372

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant-Appellant.

373

Stipulation as to Record.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true copy of the transcript of the record of said District Court in the above entitled matter as agreed on by the parties.

Dated: New York, N. Y., March 14, 1952.

374

RICHARD M. CANTOR,
Attorney for Plaintiff-Appellee.

HAIGHT, DEMING, GARDNER, POOR & HAVENS,
Attorneys for Defendant-Appellant.

375

376

Clerk's Certificate.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE.]

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF NEW YORK } ss.:

I, WILLIAM V. CONNELL, Clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing record is a
377 correct transcript of the record of the said District Court in the above entitled matter as agreed on by the parties. The last date to file this record is April 3, 1952.

IN TESTIMONY WHEREOF, I have caused the Seal of the said Court to be hereunto affixed in the City of New York, in the Southern District of New York, this 14 day of March in the year of our Lord one thousand nine hundred and fifty-two and of the independence of the said United States the one hundred and seventy-sixth.

WILLIAM V. CONNELL,
Clerk.

378

UNITED STATES COURT OF APPEALS,

FOR THE SECOND CIRCUIT.

No. 246—October Term, 1951.

(Argued April 18, 1952 Decided May 2, 1952.)

Docket No. 22331

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

v.

J. LAURITZEN,
Defendant-Appellant.

380

Before:

SWAN, *Chief Judge*,

AUGUSTUS N. HAND and FRANK, *Circuit Judges*.

Appeal from the United States District Court for the Southern District of New York.

HAIGHT, DEMING, GARDNER, POOR & HAVENS, Attorneys for appellant; James M. Estabrook and David P. H. Watson, of Counsel. 381

RICHARD M. CANTOR, Attorney for appellee; George Halpern, of Counsel.

382 *Opinion.*

PER CURIAM:

The judgment is affirmed on the authority of *Kyriakos* v. *Goulandris*, 2 Cir., 151 F. 2d 132 and *Taylor* v. *Atlantic Maritime Co.*, 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915.

383

384

Judgment. 385

UNITED STATES COURT OF APPEALS,

SECOND CIRCUIT.

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the 2nd day of May one thousand nine hundred and fifty-two.

Present:

HON. THOMAS W. SWAN,
Chief Judge,
HON. AUGUSTUS N. HAND,
HON. JEROME N. FRANK,
Circuit Judges. 386

EVALD JOHANN LARSEN,
Plaintiff-Appellee,

v.

J. LAURITZEN,
Defendant-Appellant.

Appeal from the District Court of the United States for the Southern District of New York.

This cause came on to be heard on the transcript of record from the District Court of the United States for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed on the authority of Kyriakos v. Goulandris, 2 Cir., 151 F. 2d 132 and Taylor v. Atlantic Maritime Co., 2 Cir., 179 F. 2d 597, cert. den. 341 U. S. 915. 387

It is further ordered that a Mandate issue to the said District Court in accordance with this decree.

s/ ALEXANDER M. BELL,
Clerk.

UNITED STATES COURT OF APPEALS

SECOND CIRCUIT

EVALD JOHANN LARSEN

v.

J. LAURITZEN

JUDGMENT

United States Court of Appeals
Second Circuit
Filed
May 2, 1952
ALEXANDER M. BELL, Clerk

391

Clerk's Certificate.

UNITED STATES OF AMERICA,

SOUTHERN DISTRICT OF NEW YORK.

I, ALEXANDER M. BELL, Clerk of the United States Circuit Court of Appeals for the Second Circuit, do hereby certify that the foregoing pages, numbered from 1 to 1.31, inclusive, contain a true and complete transcript of the record and proceedings had in said Court, in the case of

EVALD JOHANN LARSEN

392

against

J. LAURITZEN

as the same remain of record and on file in my office.

IN TESTIMONY WHEREOF, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, in the Second Circuit, this 30th day of June in the year of our Lord One Thousand Nine Hundred and Fifty-two, and of the Independence of the said United States the one hundred and seventy-sixth.

ALEXANDER M. BELL,
Clerk.

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(Seal)

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 226

J. LAURITZEN, Petitioner,

vs.

EVALD JOHANN LARSEN

ORDER ALLOWING CERTIORARI—Filed October 13, 1952

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.